UNITED STATES CODE ANNOTATED

Title 42

The Public Health
and
Welfare
§§ 501 to 1890

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UNITED STATES CODE
AND
UNITED STATES CODE ANNOTATED

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UNITED STATES CODE ANNOTATED

TITLE 42

THE PUBLIC HEALTH AND WELFARE

Section 501–1890

Comprising All Laws of a General and Permanent Nature
Under Arrangement of
Official Code of the Laws of the United States
With
Annotations from Federal and State Courts

St. Paul, Minn.
West Publishing Co.

Brooklyn, New York
Edward Thompson Company

T. 42 U.S.C.A. §§ 501 to 1890
1–1967

THIS TITLE

These volumes, constituting Title 42 of the United States Code, contain laws of a general and permanent nature relating to the Public Health and Welfare, including all amendments and new enactments through the end of the 88th Congress.

Although the subjects covered in these volumes are, by and large, among the newer facets of Federal legislation, yet there is an earlier origin to much of it than is generally appreciated. For example, public attention this year has been brought to dramatic focus on the Civil Rights Act of 1964, which was signed by the President on July 2nd. In fact, it is nearly a hundred years since Congress passed the first civil rights and elective franchise acts, found in Title 42 in sections 1971, 1972 and 1981 et seq. There have been other such acts in between. All this legislation is encompassed in these volumes.

Other major laws included are:

Social Security Act
Economic Opportunity Program
Atomic Energy Act
Public Health Service Act
United States Housing Act of 1937
Housing Act of 1949
Housing of Persons Engaged in the National Defense

The foregoing enumeration of Acts shows at a glance the wide and varied scope of this title. The Social Security Act affects virtually every person in the United States. The Economic Opportunity Program, the latest expression of Congress in its drive to combat poverty, should leave its impact in widespread areas of this country. The Atomic Energy Act governs the control of atomic energy which has radically changed many concepts of manufacturing, engineering and production. The Housing Acts provide for the elimination of slums, construction of low-rent housing, and urban renewal.

Popular Name Table

For convenient reference, a table of popular names of the laws covered in Title 42, showing the sections where the laws are found, has been included.

Annotations or Notes of Decisions

The case annotations or constructions of the courts are correlated under numbered notes so that the user, by referring to the same note number in the supplementary pamphlets and pocket parts, can readily locate the latest decisions on any phase of the law.

The annotations are complete, covering all decisions of the Federal and State courts and the opinions of the Attorney General, construing and applying the laws, in the following:

Reports	*Abbreviations*
Supreme Court Reporter	S.Ct.
United States Reports	U.S.
Lawyers' Edition	L.Ed.
Federal Cases	Fed.Cas.No.
Federal Reporter	F.
Federal Reporter, Second Series	F.2d
Appeal Cases, District of Columbia	App.D.C.
U. S. Court of Appeals, District of Columbia	U.S.App.D.C.
Federal Supplement	F.Supp.
Federal Rules Decisions	F.R.D.
Atlantic Reporter	A.
Atlantic Reporter, Second Series	A.2d
California Reporter	Cal.Rptr.
New York Supplement	N.Y.S.
New York Supplement, Second Series	N.Y.S.2d
North Eastern Reporter	N.E.
North Eastern Reporter, Second Series	N.E.2d
North Western Reporter	N.W.
North Western Reporter, Second Series	N.W.2d
Pacific Reporter	P.
Pacific Reporter, Second Series	P.2d
South Eastern Reporter	S.E.
South Eastern Reporter, Second Series	S.E.2d
Southern Reporter	So.
Southern Reporter, Second Series	So.2d
South Western Reporter	S.W.
South Western Reporter, Second Series	S.W.2d
Opinions Attorney General	Op.Atty.Gen.
Court of Claims	Ct.Cl.
Court of Customs and Patent Appeals	C.C.P.A.
Board of Tax Appeals	B.T.A.
Tax Court of the United States	T.C.
American Bankruptcy Reports	Am.Bankr.Rep.
American Bankruptcy Reports, New Series	Am.Bankr.Rep.N.S.
Other Standard Reports	

Historical Notes and Cross References

In addition to the latest statutes and court constructions, these volumes contain complete historical notes, and cross references to related subjects.

Index to Text

A separate index to the text of the laws contained in Title 42 is set out in the last volume of this title to assist subscribers in quickly locating particular subjects in which they are interested.

THE PUBLISHERS

October, 1964

PREFACE

UNITED STATES CODE 1958 EDITION

This sixth edition of the United States Code was prepared and published pursuant to section 202(c) of Title 1 of the Code. It contains a consolidation and codification of all the general and permanent laws of the United States in force on January 6, 1959. By statutory authority this edition may be cited "U. S. C. 1958 ed." Previous editions were published in 1926, 1934, 1940, 1946, and 1952.

Inasmuch as many of the general and permanent laws which are required to be incorporated in this Code are inconsistent, redundant, archaic and obsolete, there has been inaugurated a comprehensive project of revising and enacting the Code, consisting of 50 titles, into law, title by title. In furtherance of this plan bills have been enacted to revise, codify and enact into law Titles 1, 3, 4, 6, 9, 10, 13, 14, 17, 18, 23, 28, 32, 35, and 38. In addition, bills relating to other titles are also being prepared for introduction at an early date. When this work is completed all the titles of the Code will be legal evidence of the general and permanent law and recourse to the numerous volumes of the Statutes at Large for this purpose will be unnecessary.

The title and chapter structure of the 1952 edition, together with Supplement V thereto, has been substantially preserved, the only changes made having been necessitated by the enactment of legislation since 1952. Any errors discovered in the 1952 edition or Supplement V have been corrected.

The actual work of preparing and editing the material for this edition was done by the West Publishing Co. of St. Paul, Minnesota, and the Edward Thompson Company of Brooklyn, New York, under the supervision of the Committee on the Judiciary of the House of Representatives. These companies prepared the original Code which Congress enacted in 1926 and have continuously served the Committee since that time in the preparation of the authorized new editions and Supplements to the Code. Grateful acknowledgment is made to the editorial and manuscript staffs of both publishing companies and of Dr. Charles J. Zinn, the law revision counsel for the Committee, for their untiring efforts to make this edition as nearly perfect as possible. Acknowledgment of valuable assistance is made also to various officers of Government departments and agencies for their helpful suggestions and criticisms.

The Committee on the Judiciary invites criticisms or suggestions with the view of improving the Code wherever possible. It is hoped that the program of enacting the Code into law, title by title, to improve its present status as merely prima facie evidence of the law, will meet with early success.

EMANUEL CELLER
Chairman,
Committee on the Judiciary.

E. E. WILLIS
Chairman, Subcommittee No. 3

Washington, D. C., December 1, 1958.

PREFACE

THE CODE OF THE LAWS OF THE UNITED STATES

This Code is the official restatement in convenient form of the general and permanent laws of the United States in force December 7, 1925, now scattered in 25 volumes—i. e., the Revised Statutes of 1878, and volumes 20 to 43, inclusive, of the Statutes at Large. No new law is enacted and no law repealed. It is prima facie the law. It is presumed to be the law. The presumption is rebuttable by production of prior unrepealed Acts of Congress at variance with the Code. Because of such possibility of error in the Code and of appeal to the Revised Statutes and Statutes at Large, a table of statutes repealed prior to December 7, 1925, is published herein together with the Articles of Confederation; the Declaration of Independence; Ordinance of 1787; the Constitution with amendments and index; tables of cross-references to the Revised Statutes, the Statutes at Large, the United States Compiled Statutes, Annotated, of the West Publishing Co., and the Federal Statutes, Annotated, of the Edward Thompson Co.; an appendix with the general and permanent laws of the first session of the Sixty-ninth Congress; and finally an exhaustive index of the laws in the Code and appendix.

The first official codification of the general and permanent laws of the United States was made in 1874 and followed by a perfected edition in 1878. From 1897 to 1907 a commission was engaged in an effort to codify the great mass of accumulating legislation. The work of the commission involved an expenditure of over $300,000, but was never carried to completion. More recently the task of codification was undertaken by the late Hon. Edward C. Little as chairman of the Committee on the Revision of the Laws of the House of Representatives, who labored indefatigably from 1919 to the day of his death, June 24, 1924. The volumes which represented the result of his labors were embodied in bills which passed the House of Representatives in three successive Congresses unanimously but failed of action in the Senate.

The Code now set forth has resulted from the hearty cooperation of the Committee of the House of Representatives on the Revision of the Laws, and the Select Committee of the United States Senate consisting of Richard P. Ernst, chairman, George Wharton Pepper, and William Cabell Bruce. Under the auspices of the committees of the House and the Senate the actual work of assembling and classifying the mass of material has been done by the West Publishing Co. and the Edward Thompson Co. These two houses have subordinated their private interests to the public good and have produced a result which would have been impossible without them. Acknowledgment of valuable assistance is given to W. H. McClenon, of the Legislative Reference Division of the Library of Congress, and to the law officers and other representatives of the several departments, bureaus, and commissions of the Government. Appreciation is also expressed of the interest in the work taken by the Committee on the Revision of the Federal Statutes of the American Bar Association.

PREFACE

Scrutiny of this Code is invited. Constructive criticism is solicited. It is the ambition of the Committee on the Revision of the Laws of the House of Representatives gradually to perfect the Code by correcting errors, eliminating obsolete matter, and restating the law with logical completeness and with precision, brevity, and uniformity of expression.

Address criticisms to Chairman of the Committee on the Revision of the Laws of the House of Representatives, Washington, D. C.

Roy G. Fitzgerald, Chairman.

Washington, June 30, 1926.

FOREWORD

The publishers of this annotated edition of the Code of the Laws of the United States are rendering a notable service to the public in general and to the legal profession in particular.

Cooperation between the publishers and the Committees of the Senate and House on Revision of the Laws made possible the preparation of the Code adopted by the Sixty-ninth Congress. The Code thus adopted is evidence of the law. After the correction of errors, inevitable in a work of this sort, the Code will no doubt be enacted into law and all the other legislation of Congress will be repealed. Meanwhile it is of the highest importance to bring together for ready reference all the legislation embodied in the Code and the mass of judicial decisions which have construed the legislation. This can best be done by distributing the Code through a series of volumes of convenient size, each volume containing a designated portion of the legislative text together with annotations of relevant judicial decisions. This task of division and addition has now been completed in a satisfactory way. The volume embodying legislation on a given subject can readily be taken from the library shelf or from the book-rack beside the desk and carried to court or wherever it is intended to be consulted. Mahomet need no longer seek the mountain. The mountain has distributed itself into foothills and all of them have come to him.

As a member of the Senate Committee on the Revision of Laws I have had something to do with the evolution of the Code. Members of the two Committees can appreciate, as few others can do, the magnitude of the problem of which the Code is a solution. While the annotations and other auxiliary matter account for the number of volumes in the present edition, it is well to remember that the Code itself, as issued from the Government Printing Office, is included within the limits of a single volume. That all the permanent and general legislation of a century and a half can be thus compressed is a fact to be borne in mind whenever it is charged that there has been an unreasonable multiplication of federal statutes. In spite of the popular impression to the contrary, I believe that a critical study of this body of law will disclose the Congress of the United States as the most conservative of the important legislatures of the world. I further believe that no set of volumes in the law library will be found more serviceable than those now made available for general use.

GEORGE WHARTON PEPPER.

Washington, D. C.,
December 16, 1926

TABLE OF CONTENTS

*

POPULAR NAME ACTS

This table lists the principal laws included in Title 42, designated as they are popularly known, and shows the classification of each within the title.

POPULAR NAME ACTS

POPULAR NAME ACTS

Cite this Book

Thus: 42 U.S.C.A. § ——

†

THE CODE OF THE LAWS

OF THE

UNITED STATES OF AMERICA

TITLE 42

THE PUBLIC HEALTH AND WELFARE

Sections 501 to 1890 are set out in this volume

CHAPTER 7.—SOCIAL SECURITY

SUBCHAPTER I.—GRANTS TO STATES FOR OLD-AGE ASSISTANCE AND MEDICAL ASSISTANCE FOR THE AGED

SUBCHAPTER II.—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

Sec.

SUBCHAPTER XI.—GENERAL PROVISIONS

SUBCHAPTER XII.—ADVANCES TO STATE UNEMPLOYMENT FUNDS

SUBCHAPTER XIII.—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN

SUBCHAPTER XIV.—GRANTS TO STATES FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED

SUBCHAPTER XV.—UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES

Sections 301–500 of this chapter are set out in preceding volume.

SUBCHAPTER III.—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

§ 501. Appropriations; use of funds for administration of unemployment compensation laws

The amounts made available pursuant to section 1101(c) (1) (A) of this title for the purpose of assisting the States in the administration of their unemployment compensation laws shall be used as hereinafter provided. Aug. 14, 1935, c. 531, Title III, § 301, 49 Stat. 626; Apr. 19, 1939, c. 73, 53 Stat. 581; Sept. 13, 1960, Pub.L. 86–778, Title V, § 524(a), 74 Stat. 982.

Historical Note

1960 Amendment. Pub.L. 86–778 eliminated provisions which prescribed specific sums for fiscal years 1936–1939 and for each fiscal year thereafter and inserted provisions relating to amounts made available pursuant to section 1101(c) (1) (A) of this title.

1939 Amendment. Act Apr. 19, 1939 provided increased appropriation for fiscal year ending June 30, 1939, and for each fiscal year thereafter.

Legislative History: For legislative history and purpose of Pub.L. 86–778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

Notes of Decisions

Constitutionality 1
Purpose 2
Trust, creation of 3

Library references

United States ⇐85.
C.J.S. United States § 123.

1. Constitutionality

Former subchapter IX of this chapter (now section 3301 et seq. of Title 26, I.R.C.1954), imposing tax on employers with respect to having individuals in their employ could not be separated from the remainder of chapter in which it appeared, and from this subchapter providing for unemployment compensation, and the two subchapters were intended to compel the state to impose taxes on all employers except those exempt in order to provide unemployment compensation within the state, and amounted to coercion of the states, and control by Congress of a matter clearly within the province of the states. Davis v. Boston & M. R. Co., C.C.A.Mass.1937, 89 F.2d 368.

Former subchapter IX of this chapter (now section 3301 et seq. of Title 26, I.R.C.1954), imposing tax on employers with respect to having individuals in their employ, in connection with this subchapter, providing for unemployment compensation, took the property of employers for the benefit of a certain class of employees, which could not be done without compensation, not even by taxation. Id.

Grants to assist states in administration of their unemployment relief laws, operations of which would relieve Federal Government of portion of potential relief burden and thus protect Federal Treasury, are justified, since reasonable protection of Federal Treasury is part of general welfare in a constitutional sense. Chas. C. Steward Mach. Co. v. Davis, C.C.A.Ala.1937, 89 F.2d 207, affirmed 57 S.Ct. 883, 301 U.S. 548, 81 L.Ed. 1279, 109 A.L.R. 1293.

Appropriation to afford aid to states in relieving local distress touching unemployment is exercise of congressional right to appropriate money, and is to be upheld if maintenance by states of unemployment compensation laws may fall within granted power. Howes Bros. Co. v. Masssachusetts Unemployment Compensation Commission, 1936, 5 N.E.2d 720, 296 Mass. 275, certiorari denied 57 S.Ct. 434, 300 U.S. 657, 81 L.Ed. 867.

2. Purpose

The policy of Congress in enacting this chapter was the safeguarding of economic security of the masses of the people who were dependent on the continuance of regular, gainful employment for their livelihood, and subchapter I of this chapter relating to old age retirement and this subchapter relating to unemployment compensation were both designed to effectuate that policy. Rivard v. Bijou Furniture Co., 1942, 27 A.2d 853, 68 R.I. 358.

3. Trust, creation of

The United States Secretary of Treasury is "trustee" of Rhode Island unemployment compensation fund, and the Rhode Island Unemployment Compensation Board is the "beneficiary" of the trust. Rivard v. Bijou Furniture Co., 1941, 21 A.2d 563, 67 R.I. 251, opinion conformed to 27 A.2d 853, 68 R.I. 358.

§ 502. Payments to States; computation of amounts

(a) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made. The Secretary's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a) of this section, pay, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified. Aug. 14, 1935, c. 531, Title III, § 302, 49 Stat. 626; Aug. 10, 1939, c. 666, Title III, § 301, 53 Stat. 1378; 1940 Reorg.Plan No. III, § 1(a), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg.Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065.

Historical Note

References in Text. Federal Unemployment Tax Act, referred to in subsec. (a), was formerly classified to sections 1600–1611 of Title 26, Internal Revenue Code, 1939. Said sections were repealed by section 7851 of Title 26, I.R.C.1954, and are now covered by sections 3301–3308 of said Title 26. For provision deeming a reference in other laws to a provision of I.R.C.1939, also as a reference to corresponding provision of I.R.C. 1954, see section 7852(b) of said Title 26.

1939 Amendment. Subsec. (a). Act Aug. 10, 1939, substituted "Federal Unemployment Tax Act" for "sections 1101–1110 of this title," and inserted "efficient" preceding "administration".

Transfer of Functions. All functions of all other officers of the Department of Labor and functions of all agencies and employees of such Department were, with the exception of the functions vested by the Administrative Procedure Act

(section 1001 et seq. of Title 5, Executive Departments and Government Officers and Employees) in hearing examiners employed by such Department, transferred to the Secretary of Labor, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 6, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 611 of Title 5, Executive Departments and Government Officers and Employees.

Functions of the Federal Security Administrator with respect to unemployment compensation were transferred to the Secretary of Labor by 1949 Reorg. Plan No. 2, § 1. See note set out under section 133z—15 of Title 5, Executive Departments and Government Officers and Employees.

Section 1 of 1949 Reorg.Plan No. 2, also provided that the functions transferred by this section shall be performed by the Secretary of Labor, or subject to his direction and control, by such officers, agencies, and employees of the Department of Labor as he shall designate.

"Administrator" was substituted for "Board" by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

Division of Disbursement and certain other offices and agencies and their functions were consolidated into Fiscal Service of Treasury Department by 1940 Reorg.Plan No. III, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Cross References

Withholding amounts from certification for payment, see note under section 363 of Title 45, Railroads.

Notes of Decisions

Library references

United States ⇐S2.
C.J.S. United States § 122.

1. Constitutionality

Grants to assist states in administration of their unemployment relief laws, operations of which would relieve Federal Government of portion of potential relief burden and thus protect Federal Treasury, are justified, since reasonable protection of Federal Treasury is part of general welfare in a constitutional sense. Chas. C. Steward Mach. Co. v. Davis, C.C.A.Ala.1937, 89 F.2d 207, affirmed 57 S.Ct. 883, 301 U.S. 548, 81 L.Ed. 1279, 109 A.L.R. 1293.

2. Amount allowable to States

Under this section former Social Security Board, now Secretary of Labor, was authorized to finance only that part of the total cost of a State's public employment offices which was over and above the expense the State otherwise would have to incur to enable such offices to perform required duties not necessary for the proper administration of the State's unemployment compensation law. 1939, 39 Op.Atty.Gen. 296.

§ 503. State laws, provisions required; stopping payments on failure to comply with law

(a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for—

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual em-

ployed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary of Labor may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 1606(b) of Title 26), immediately upon such receipt, to the Secretary of the Treasury to the credit of the unemployment trust fund established by section 1104 of this title; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606(b) of Title 26: *Provided,* That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further,* That the amounts specified by section 1103(c) (2) of this title may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices; and

(6) The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 502 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 502 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law.

(b) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a) of this section;

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State: *Provided*, That there shall be no finding under clause (1) until the question of entitlement shall have been decided by the highest judicial authority given jurisdiction under such State law: *Provided further*, That any costs may be paid with respect to any claimant by a State and included as costs of administration of its law.

(c) The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) That such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes; or

(2) That such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

Aug. 14, 1935, c. 531, Title III, § 303, 49 Stat. 626; June 25, 1938, c. 680, § 13(g), 52 Stat. 1112; June 20, 1939, c. 227, § 18, 53 Stat. 848; Aug. 10, 1939, c. 666, Title III, § 302, 53 Stat. 1378; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 416(c), 60 Stat. 991; 1949 Reorg.Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, c. 809, Title IV, § 405(b), 64 Stat. 560; Aug. 5, 1954, c. 657, § 5(a) (1), 68 Stat. 673.

Historical Note

References in Text. Federal Unemployment Tax Act, referred to in subsec. (a), was formerly classified to sections 1600–1611 of Title 26, Internal Revenue Code, 1939. Said sections were repealed by section 7851 of Title 26, I.R.C.1954, and are now covered by sections 3301-3308 of said Title 26. For provision deeming a reference in other laws to a provision of I.R.C.1939, also as a reference to corresponding provision of I.R.C.1954, see section 7852(b) of said Title 26.

Section 1606(b) of Title 26, referred to in subsec. (a) (4, 5), which was a reference to section 1606(b) of the Internal Revenue Code, 1939, was repealed by section 7851 of Title 26, I.R.C.1954, and is now covered by section 3305(b) of said Title 26. For provision deeming a reference in other laws to a provision of I.R.C.1939, also as a reference to corresponding provision of I.R.C.1954, see section 7852(b) of said Title 26.

1954 Amendment. Subsec. (a) (5). Act Aug. 5, 1954 made it clear that the funds credited to the State account may, subject to certain restrictions, be used for administrative expenses of the State in connection with its unemployment compensation law.

1950 Amendment. Subsec. (b). Act Aug. 28, 1950 added provisos.

1946 Amendment. Subsec. (a) (5). Act Aug. 10, 1946 added proviso allowing payment of disability benefits.

1939 Amendments. Subsec. (a). Act Aug. 10, 1939 substituted "Federal Unemployment Tax Act" for "sections 1101–1110 of this title", amended pars. (1), (4), and (5) generally, and added pars. (8) and (9).

Subsec. (c) (2). Act June 20, 1939 substituted "unemployment" for "employment".

1938 Amendment. Subsec. (c). Act June 25, 1938 added subsec. (c).

Transfer of Functions. All functions of all other officers of the Department of Labor and functions of all agencies and employees of such Department were, with the exception of the functions vested by the Administrative Procedure Act (section 1001 et seq. of Title 5, Executive Departments and Government Officers and Employees) in hearing examiners employed by such Department, transferred to the Secretary of Labor, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 6, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 611 of Title 5, Executive Departments and Government Officers and Employees.

Functions of the Federal Security Administrator with respect to unemployment compensation were transferred to the Secretary of Labor by 1949 Reorg. Plan No. 2, § 1. See note set out under section 133z—15 of Title 5, Executive Departments and Government Officers and Employees.

Section 1 of 1949 Reorg.Plan No. 2 also provided that the functions transferred by this section shall be performed by the Secretary of Labor, or subject to his direction and control, by such officers, agencies, and employees of the Department of Labor as he shall designate.

"Administrator" was substituted for "Board" and "he" for "it" by 1946 Reorg. Plan No. 2. See note under section 902 of this title.

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 10, 1946, see 1946 U.S.Code Cong.Service, p. 1510. See, also, Act Aug. 4, 1954, 1954 U.S.Code Cong. and Adm.News, p. 2909.

Cross References

Withdrawal as breach of conditions, see note under section 363 of Title 45, Railroads.

Notes of Decisions

Library references

United States ⇐82.
C.J.S. United States § 122.

1. Construction with state laws

Unless a State Unemployment Compensation Act clearly differed from section 501 et seq., of this title and former section 1101 et seq. (now covered by section 3301 et seq. of Title 26, I.R.C.1954), it had to be assumed that the Legislature intended that they be interpreted alike, particularly as respects persons obligated to make contributions. Arnold College for Hygiene and Physical Ed. v. Danaher, 1945, 41 A.2d 89, 131 Conn. 503.

2. Co-ordination of state and federal laws

The New Jersey Unemployment Compensation Law was enacted to form an integral part of unemployment insurance system established by this chapter. Lazar v. Board of Review, Division of Employment Sec., Dept. of Labor and Industry, 1962, 186 A.2d 121, 77 N.J.Super. 251.

Rhode Island Unemployment Compensation Act, Gen.Laws 1938, c. 284 et seq., which was enacted pursuant to provisions of this chapter, was in effect an integral part of this chapter and as such its revenue provisions for carrying out its purposes were intended by Congress to be on a par with former revenue provisions of this chapter (now covered in sections 3101 et seq., 3301 et seq. of Title 26, I.R.C.1954) as respects priority of claims in proceeding to dissolve a corporation. Rivard v. Bijou Furniture Co., 1942, 27 A.2d 853, 68 R.I. 358.

State and Federal unemployment compensation laws are sufficiently coordinated if there is within the state sufficient reciprocity between employment on which tax is levied and those who receive its benefits. Unemployment Compensation Commission v. National Life Ins. Co., 1941, 14 S.E.2d 689, 219 N.C. 576.

Because it entered field of social security by enacting Code 1939, § 8052(1) et seq., the state legislature was not required to conform in every respect to the national ideology on the subject as expressed in this chapter. Id.

3. Coercion of State

This chapter was not coercive as requiring state to enact employment compensation law in conformity with federal plan, since matter is purely one of state's concern, and especially where California St.1935, p. 1226, was passed before this chapter was enacted. Gillum v. Johnson, 1936, 62 P.2d 1037, 7 Cal.2d 744, 108 A.L.R. 595, rehearing denied 63 P.2d 810, 7 Cal.2d 744, 108 A.L.R. 595.

4. Assessments under state laws

Assessments under Unemployment Compensation Act, Gen.Code, § 1345-34 are designed to match like contributions under section 301 et seq. of this title, hence state courts in determining applicability of State Act in a given situation are disposed to follow holdings of federal courts as to applicability of said sections in same circumstances. Commercial Motor Freight v. Ebright, 1944, 54 N.E.2d 297, 143 Ohio St. 127, 151 A.L.R. 1321.

5. Extension of state laws

The section of Unemployment Compensation Act, Rem.Rev.Stat. § 9998-122, providing that if Congress should extend coverage of section 301 et seq. of this title to other exempted services or employment, then Unemployment Compensation Act should automatically extend to same services, had no application where congressional enactment narrowed, rather than extended coverage. In re Yakima Fruit Growers Ass'n, 1944, 146 P.2d 890, 20 Wash.2d 202.

6. Suspension of state laws

The section of Unemployment Compensation Act, Rem.Rev.Stat. § 9998-123, providing for suspension of the Act under certain circumstances does not indicate legislative intent to make Act agreeable to any limitation or further exemption from operation of this chapter, but indicates intent to suspend State Act until next session of Legislature in event no funds are available under section 301 et seq. of this title to match those of State. In re Yakima Fruit Growers Ass'n, 1944, 146 P.2d 800, 20 Wash.2d 202.

7. Power of Secretary of Labor over payments

Former Federal Social Security Board, now Secretary of Labor, had power, within reasonable limits, under this chapter and state statutes and agreement between federal and state governments, to give or withhold moneys for leasing of offices by state for use of state division of placement and unemployment insurance, and such former Board's failure to provide moneys to pay rent under lease of one of such offices left state without moneys "available" for leasing thereof, so as to entitle it to terminate lease, which provided, as required by this section, that state should incur no liability beyond moneys available for such

purpose. Starling Realty Corporation v. State, 1940, 20 N.Y.S.2d 878, 174 App.Div. 375, affirmed 26 N.Y.S.2d 47, 261 App.Div. 363, affirmed 36 N.E.2d 201, 286 N.Y. 272, reargument and motion denied 37 N.E.2d 133, 286 N.Y. 696.

Former Board, now Secretary of Labor, had duty under this section to refuse to certify any grant to a State unless it found that the State had provided methods of administration reasonably calculated to insure a proper administration of its unemployment compensation law. 1939, 39 Op.Atty.Gen. 296.

Under this section it was the duty of former Board, now Secretary of Labor, to deny further grants to a State if failure of the State adequately to finance its employment offices resulted in the improper administration of its unemployment compensation law. Id.

8. Salary of state appeal board members

Governor's authority to fix salaries of members of appeal board of Unemployment Compensation Commission was subject to former Federal Social Security Board's regulation of expenditure of fund created to pay expenses of administration of Unemployment Compensation Act, Comp.Laws Supp.1940, § 8485-75; Pub. Act 1936, Ex.Sess., No. 1, §§ 10, 11 as amended by Pub.Acts 1937, No. 347. Roxborough v. Michigan Unemployment Compensation Commission, 1944, 15 N.W. 2d 724, 309 Mich. 505.

Member of appeal board of Unemployment Compensation Commission who, though he knew former Federal Social Security Board had limited salary of members of appeal board to $25 per day for 10 days' work per month in 1939 and 13⅓ days per month thereafter, voluntarily performed services for additional days was not entitled to compensation therefor, though Governor in appointing him to board had fixed his salary at $25 per day but not to exceed $4500 per year. Id.

SUBCHAPTER IV.—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN

Historical Note

1962 Amendment. Pub.L. 87-543, Title I, § 104(a) (1), July 25, 1962, 76 Stat. 185, substituted "Aid and Services to Needy Families with Children" for "Aid to Dependent Children" in the heading of the subchapter.

§ 601. Appropriations

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children. Aug. 14, 1935, c. 531, Title IV, § 401, 49 Stat. 627; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 312(a), 70 Stat. 848; July 25, 1962, Pub.L. 87-543, Title I, § 104 (a) (4), (c) (2), 76 Stat. 185, 186.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

1962 Amendment. Pub.L. 87-543 substituted in the second sentence "aid and services to needy families with children" for "aid to dependent children", and inserted in the first sentence "and rehabilitation" following "financial assistance" and "or retain capability for" following "attain".

1956 Amendment. Act Aug. 1, 1956 restated the purpose to include encouragement of care of dependent children in their own homes or in the homes of relatives, and authorized services to needy dependent children and the parents or relatives to help maintain and strengthen family life and to help such parents or relatives to attain the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board" by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

State Plans in Effect July 25, 1962: Automatic Conformity to Amendments. Section 104(b) of Pub.L. 87-543 provided that: "Each State plan approved under title IV of the Social Security Act [this subchapter] and in effect on the date of the enactment of this Act [July 25, 1962] shall be deemed for purposes of such title [this subchapter], without the necessity of any change in such plan, to have been conformed with the amendments made by subsection (a) of this section [to sections 601-604, 606-608, 1202 and 1352 of this title]."

Legislative History: For legislative history and purpose of Pub.L. 87-543, see 1962 U.S.Code Cong. and Adm.News, p. 1943.

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary

(a) A State plan for aid and services to needy families with children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness; (5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan; and (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such pro-

visions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, the State agency may, subject to limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child; (8) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to families with dependent children; (9) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals; (10) effective July 1, 1952, provide for prompt notice to appropriate law-enforcement officials of the furnishing of aid to families with dependent children in respect of a child who has been deserted or abandoned by a parent; (11) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title; (12) provide a description of the services (if any) which the State agency makes available to maintain and strengthen family life for children, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (13) provide for the development and application of a program for such welfare and related services for each child who receives aid to families with dependent children as may be necessary in the light of the particular home conditions and other needs of such child, and provide for coordination of such programs, and any other services provided for children under the State plan, with the child-welfare services plan developed as provided in sections 721–728 of this title, with a view toward providing welfare and related services which will best promote the welfare of such child and his family.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth. Aug. 14, 1935, c. 531, Title IV, §

402, 49 Stat. 627; Aug. 10, 1939, c. 666, Title IV, § 401, 53 Stat. 1379; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 2, § 321, Pt. 6, § 361(c, d), 64 Stat. 549, 558; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 312(b), 70 Stat. 849; July 25, 1962, Pub.L. 87–543, Title I, §§ 103, 104(a) (2), (3) (A), (B), (5) (A), 106(b), 76 Stat. 185, 188.

Historical Note

1962 Amendment. Pub.L. 87–543, § 104 (a) (2), substituted "aid and services to needy families with children" for "aid to dependent children" in the catchline.

Subsec. (a). Pub.L. 87–543, §§ 103, 104 (a) (3) (A), (5) (A), 106(b), substituted "aid and services to needy families with children" for "aid to dependent children", in the opening provisions, and "aid to families with dependent children" for "aid to dependent children" wherever appearing in cls. (4), (7)–(10), added the provision respecting the consideration of expenses reasonably attributable to the earning of income and the exception provision in cl. (7), and added cl. (13).

Subsec. (b). Pub.L. 87–543, § 104(a) (3) (B), substituted "aid to families with dependent children" for "aid to dependent children."

1956 Amendment. Subsec. (a) (12). Act Aug. 1, 1956 added cl. (12).

1950 Amendment. Subsec. (a). Act Aug. 28, 1950, § 321(a), (b), substituted in cl. (4) "provide for granting * * * with reasonableness" for "provide for granting to any individual, whose claim with respect to aid to a dependent child is denied, an opportunity for a fair hearing before such State agency", struck out "and" preceding cl. (8) and a semicolon after it, and added cls. (9)–(11).

Subsec. (b) (2). Act Aug. 28, 1950, § 321(c), prevented denial of aid in cases where the child of parents normally resident in the State happens to be born across the State line.

1939 Amendment. Subsec. (a). Act Aug. 10, 1939, amended cl. (5) generally and added cls. (7) and (8).

Effective Date of 1962 Amendment. Enactment of subsec. (a) (13) and amendment of subsec. (a) (7) of this section by sections 103, 106 of Pub.L. 87–543 effective July 1, 1963, see section 202(a) of Pub.L. 87–543, set out as a note under section 302 of this title.

Effective Date of 1956 Amendment. Amendment of this section by Act Aug. 1, 1956 effective July 1, 1957, see section 314 [315] of Act Aug. 1, 1956, set out as a note under section 302 of this title.

Effective Date of 1950 Amendment. Subsecs. (a) and (c) of section 321 of Act Aug. 28, 1950, provided in part that amendments of subsections (a) and (b) of this section shall become effective July 1, 1951.

Effective Date of 1939 Amendment. Amendment by Act Aug. 10, 1939, adding clauses (7) and (8) was made effective as of July 1, 1941, by section 401(b) of Act Aug. 10, 1939. Clause (5) was amended by said Act without specific provision as to effective date.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board", and "he", "him", or "his" for "it" or "its" wherever appearing by Act Aug. 28, 1950, § 361(c), (d).

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

Public Access to State Disbursement Records. Public access to State records of disbursements of funds and payments under this subchapter, see note under section 302 of this title.

State Plans in Effect July 25, 1962: Automatic Conformity to Amendments. State plans in effect July 25, 1962 deemed to have been conformed to amendment of opening provisions and cls. (4), (7)–(10) of subsec. (a) of this section by section 104(a) of Pub.L. 87–543, see section 104(b) of Pub.L. 87–543, set out as a note under section 601 of this title.

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287.

Notes of Decisions

Library references

Social Security and Public Welfare ⇐194.
C.J.S. Social Security and Public Welfare §§ 63, 64.

1. Purpose

The intent of subsection (a) (8) of this section was to restrict the use or disclosure of such information to purposes directly connected with the administration of aid to dependent children. State ex rel. Haugland v. Smythe, 1946, 169 P. 2d 706, 25 Wash.2d 161, 165 A.L.R. 1295.

2. Municipal welfare policy

Municipality's welfare policy, calling for reduced eligibility for welfare aid, was violative of McKinney's N.Y. Social Welfare Law and this chapter as setting up criteria which had no sanction in law, and its enforcement could be enjoined. State Bd. of Social Welfare v. City of Newbergh, 1961, 220 N.Y.S.2d 54, 28 Misc. 2d 539.

3. Records of Welfare Department

While recipient of aid for needy children may have no legal right to any part of income of man assuming role of spouse, such income may be considered in determining amount of aid granted. Kern County v. Coley, Cal.App.1964, 40 Cal. Rptr. 53.

The records of county welfare department are exempt from disclosure to those who are motivated by curiosity or by commercial, personal, or political reasons or the desire to institute a creditor's suit or similar proceedings. State ex rel. Haugland v. Smythe, 1946, 169 P.2d 706, 25 Wash.2d 161, 165 A.L.R. 1295.

Original records of county public welfare department concerning delinquent minor child and parents and grandparents who had requested public assistance were not "privileged communications" which were not to be disclosed in juvenile court proceeding relating to the child, where element of confidentiality was not essential to the full and satisfactory maintenance of the relations between the parties concerned, and the injury that would allegedly inure to the relation by the disclosure of the records was not as great as the benefits gained for the correct disposal of litigation. Id.

4. State plan, sufficiency of

The state program of aid for needy children meets the requirements of eligibility for federal grant of uniform administration and supervision of statewide agency, notwithstanding inability of State Department of Social Welfare to compel counties to grant additional aid where caretaker of child is unable due to necessitous circumstances to provide adequate home care for child but is not qualified by residence for aid. Department of Social Welfare v. Kern County, 1947, 180 P.2d 1, 29 Cal.2d 873.

5. Jurisdiction

Provisions of subsection (a) of this section and section 606 of this title relating to state plans for aid to dependent children and state statutes enacted pursuant thereto adopting and carrying out federal social security programs could not be held to give county juvenile court jurisdiction over enrolled members of Indian tribes to declare them dependent children and to deprive their parents of their custody. State ex rel. Adams v. Superior Court for Okanogan County, Juvenile Court Session, 1960, 356 P.2d 985, 57 Wash.2d 181.

§ 603. Payment to States; computation of amounts

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during

such quarter as aid to families with dependent children under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) fourteen-seventeenths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $17 multiplied by the total number of recipients of aid to families with dependent children for such month (which total number, for purposes of this subsection, means (i) the number of individuals with respect to whom such aid in the form of money payments is paid for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to families with dependent children in the form of medical or any other type of remedial care, plus (iii) the number of individuals, not counted under clause (i) or (ii), with respect to whom payments described in section 606(b) (2) of this title are made in such month and included as expenditures for purposes of this paragraph or paragraph (2)); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $30 multiplied by the total number of recipients of aid to families with dependent children for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to families with dependent children under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $18 multiplied by the total number of recipients of such aid for such month; and

(3) in the case of any State whose State plan approved under section 602 of this title meets the requirements of subsection (c) (1) of this section, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) services which are prescribed pursuant to subsection (c) (1) of this section and are provided (in accordance with the next sentence) to any relative, specified in section 606(a) of this title, with whom any

dependent child (applying for or receiving aid to families with dependent children) is living in order to help such relative attain or retain capability for self-support or self-care, or services which are so prescribed and so provided in order to maintain and strengthen family life for any such child, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to any such child or relative, or

(iii) any of the services prescribed pursuant to subsection (c) (1) of this section, and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for any relative specified in section 606(a) of this title with whom any child (who, within such period or periods as the Secretary may prescribe, has been or is likely to become an applicant for or recipient of aid to families with dependent children) is living, or as appropriate for such a child, if such services are requested by such relative and are provided to such relative or child in accordance with the next sentence, or

(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to any relative, specified in section 606(a) of this title, with whom any child (who, within such period or periods as the Secretary may prescribe, has been or is likely to become an applicant for or recipient of aid to families with dependent children) is living, or to such child, if such services are requested by such relative or for services so provided to any child who is an applicant for or recipient of such aid, or to any relative, specified in section 606(a) of this title, with whom such a child is living; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this subchapter shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in

need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(4) in the case of any State whose State plan approved under section 602 of this title does not meet the requirements of subsection (c) (1) of this section, an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3) and provided in accordance with the provisions of such paragraph.

The number of individuals with respect to whom payments described in section 606(b) (2) of this title are made for any month, who may be included as recipients of aid to families with dependent children for purposes of paragraph (1) or (2), may not exceed 5 per centum of the number of other recipients of aid to families with dependent children for such month.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter

under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to aid to families with dependent children furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

(c) (1) In order for a State to qualify for payments under paragraph (3) of subsection (a) of this section, its State plan approved under section 602 of this title must provide that the State agency shall make available at least those services to maintain and strengthen family life for children, and to help relatives specified in section 606(a) of this title with whom children (who are applicants for or recipients of aid to families with dependent children) are living to attain or retain capability for self-support or self-care, which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for

hearing to the State agency administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (3) of subsection (a) of this section until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (3) of subsection (a) of this section but shall instead be made, subject to the other provisions of this subchapter, under paragraph (4) of such subsection. Aug. 14, 1935, c. 531, Title IV, § 403, 49 Stat. 628; Aug. 10, 1939, c. 666, Title IV, § 402, 53 Stat. 1380; 1940 Reorg.Plan No. III, § 1(a), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title V, §§ 502, 504, 60 Stat. 992, 993; Aug. 6, 1947, c. 510, § 3, 61 Stat. 794; June 14, 1948, c. 468, § 3(b), 62 Stat. 439; Aug. 28, 1950, c. 809, Title III, Pt. 2, § 322(a), Pt. 6, § 361(c, d), 64 Stat. 550, 558; July 18, 1952, c. 945, § 8(b), 66 Stat. 778; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 1, 1954, c. 1206, Title III, § 303(a), 68 Stat. 1097; Aug. 1, 1956, c. 836, Title III, §§ 302, 312(c), 342, 351(a), 70 Stat. 847, 849, 852, 854; Aug. 28, 1958, Pub.L. 85–840, Title V, § 502, 72 Stat. 1048; July 25, 1962, Pub.L. 87–543, Title I, §§ 101(a) (2), (b) (2) (A)–(C), 104(a) (3) (C), 108(b), (c), 76 Stat. 174, 180, 185, 190.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

References in Text. The Vocational Rehabilitation Act, referred to in subsec. (a) (3) (D), (E), is classified to sections 31–42 of Title 29, Labor.

1962 Amendment. Subsec. (a). Pub.L. 87–543, § 101(a) (2), substituted "aid and services to needy families with children" for "aid to dependent children", in opening provisions.

Subsec. (a) (1). Pub.L. 87–543, §§ 101 (a) (2), 108(c), substituted "aid to families with dependent children", in four instances, and "such aid" in subpar. (A) (i) for "aid to dependent children", and added subpar. (A) (iii).

Subsec. (a) (2). Pub.L. 87–543, § 101(a) (2), substituted "aid to families with dependent children" and "such aid" for "aid to dependent children."

Subsec. (a) (3). Pub.L. 87–543, § 101(a) (2), (b) (2) (A), inserted in the opening provisions "whose State plan approved under section 602 of this title meets the requirements of subsection (c) (1) of this section" following "any State", and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services to help relatives attain and retain capability for self-support or self-care and to maintain and strengthen family life for dependent children, services likely to prevent or reduce dependency, and services appropriate for relatives and dependent children where such relatives request such services, and training of State or local public assistance personnel administering

such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff services of State or local public assistance agencies to help relatives attain self-support or self-care and to maintain and strengthen family life for dependent children.

Subsec. (a) (4). Pub.L. 87-543, § 101 (b) (2) (B), added subsec. (a) (4).

Subsec. (a), closing provisions. Pub.L. 87-543, § 108(b), limited the number of individuals with respect to whom protective payments are made in any month who may be included as recipients of aid to families with dependent children to 5 per centum of the number of other recipients of such aid during the month.

Subsec. (b) (2) (B). Pub.L. 87-543, § 104(a) (3) (C), substituted "aid to families with dependent children" for "aid to dependent children."

Subsec. (c). Pub.L. 87-543, § 101(b) (2) (C), added subsec. (c).

1958 Amendment. Subsec. (a). Pub.L. 85-840 substituted provisions authorizing the counting of the first $30 of expenditures multiplied by the total number of recipients for provisions which authorized the counting of the first $32 with respect to the first dependent child and the adult relative with whom the child is living and $23 with respect to each of the other dependent children in the home, inserted provisions permitting sums spent for insurance premiums for medical or any other type of remedial care or the cost thereof to be included within the expenditures, excluded Guam from the provisions which allow an average monthly payment of $30 and included Guam within the provisions which authorize an average monthly payment of $18, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956 Amendment. Subsec. (a). Act Aug. 1, 1956, § 302, substituted "during such quarter as aid to dependent children in the form of money payments under the State plan" for "during such quarter as aid to dependent children under the State plan" in clauses (1) and (2), "with respect to whom aid to dependent children in the form of money payments is paid for such month" for "with respect to whom aid to dependent children is paid for such month" in par. (a) of clause (1), and inserted clause (4).

Act Aug. 1, 1956, § 312(c), eliminated, ", which shall be used exclusively as aid to dependent children," following "the Virgin Islands, an amount" in clauses (1) and (2), and substituted "including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision), to relatives with whom such children (applying for or receiving such aid) are living, in order to help such relatives attain self-support or self-care, or which are provided to maintain and strengthen family life for such children" for "which amount shall be used for paying the costs of administering the State plan or for aid to dependent children, or both, and for no other purpose" in clause (3).

Act Aug. 1, 1956, § 342, substituted "October 1, 1956" for "October 1, 1952", eliminated ", which shall be used exclusively as aid to dependent children," following "the Virgin Islands, an amount" in clauses (1) and (2), substituted "$32" for "$30" in three instances, "$23" for "$21", "$17" for "$15", and "fourteen-seventeenths" for "four-fifths", inserted "and not counting so much of such expenditure for any month with respect to a relative with whom any dependent child is living as exceeds $18" in clause (2), and substituted "Secretary of Health, Education, and Welfare" for "Secretary", and "including services which are provided by the staff of the State plan, including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to relatives with whom such children (applying for or receiving such aid) are living, in order to help such relatives attain self-support or self-care, or which are provided to maintain and strengthen family life for such children" for "which amount shall be used for paying the costs of administering the State plan or for aid to dependent children, or both, and for no other purpose" in clause (3).

Act Aug. 1, 1956, § 351(a), inserted ", and not counting so much of such expenditure for any month with respect to a relative with whom any dependent

child is living as exceeds $18" in clause (2).

1954 Amendment. Subsec. (b) (1). Act Sept. 1, 1954, substituted "the State's proportionate share" for "one-half."

1952 Amendment. Subsec. (a). Act July 18, 1952 increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed the formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.

1950 Amendment. Subsec. (a). Act Aug. 28, 1950, § 322(a), changed the basis of computation of the Federal portion of aid to dependent children.

1948 Amendment. Subsec. (a). Act June 14, 1948 substituted $27 for $24 wherever appearing, $18 for $15, and $12 for $9.

1946 Amendment. Subsec. (a). Act Aug. 10, 1946, § 502(a), increased the maximum monthly State expenditure to which the Federal government will contribute from $18 for one dependent child and $12 each for other dependent children in the same family to $24 and $15 respectively and increased the Federal contribution from ½ the State's expenditure for carrying out the State plan to a contribution to be used exclusively as aid to dependent children of ⅔ the State's expenditure up to $9 monthly per child plus ½ the State's expenditure over $9, and a contribution of ½ the State's expenditure for administration

Subsec. (b). Act Aug. 10, 1946, § 502 (b), substituted "the State's proportionate share" for "one-half".

1939 Amendment. Subsec. (a). Act Aug. 10, 1939 inserted "one-half" for "one-third". Subsec. (b). Act Aug. 10, 1939 substituted "one-half" for "two-thirds" in par. (1) and inserted in par. (2) provision reading: "(B) reduced by a sum * * * under the state plan."

Effective Date of 1962 Amendment. Amendment of subsec. (a) (1)–(3) of this section by section 101(a) (2) of Pub.L. 87-543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Aug. 31, 1962, and addition of subsecs. (a) (4) and (c) and amendment of subsec. (a) (3) of this section by section 101(b) (2) (A)–(C) of Pub.L. 87-543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, see section 202(f) of Pub.L. 87-543, set out as a note under section 303 of this title.

Section 202(e) of Pub.L. 87-543 provided that: "The amendments made by sections 105 (other than subsection (c)) and 108 [adding sections 603(a) (1) (A) (iii), 603 (a) last par., and 609 of this title, amending section 606(b) of this title, and enacting provisions set out as notes under sections 603 and 609 of this title] shall be applicable in the case of expenditures under a State plan approved under title IV of the Social Security Act [this subchapter], made during the period beginning October 1, 1962, and ending with the close of June 30, 1967."

Effective Date of 1958 Amendment. For effective date of amendment of this section by Pub.L. 85-840, see section 512 of Pub.L. 85-840, set out as a note under section 303 of this title.

Effective and Termination Date of 1956 Amendment. Amendment of subsec. (a) of this section by section 342 of Act Aug. 1, 1956 effective only for the period beginning October 1, 1956, and ending with the close of June 30, 1959, see section 345 of such Act Aug. 1, 1956, set out as a note under section 303 of this title.

Effective Date of 1956 Amendment. Section 351(d) of Act Aug. 1, 1956, provides that: "The amendments made by this section [to subsec. (a) (2) of this section and sections 606(b) and 1308 of this title] shall be effective with respect to the fiscal year ending June 30, 1957, and all succeeding fiscal years."

Amendment of this section by section 302 of Act Aug. 1, 1956 effective July 1, 1957, see section 305 of such Act Aug. 1, 1956, set out as a note under section 303 of this title.

Effective and Termination Date of 1952 Amendment. Amendment of subsec. (a) effective for the period beginning Oct. 1, 1952, and ending Sept. 30, 1954, see note set out under section 303 of this title. See, also, effective and termination date note above.

Effective Date of 1950 Amendment. Section 322(b) of Act Aug. 28, 1950, provided that the amendment of subsection (a) shall be effective Oct. 1, 1950.

Effective Date of 1948 Amendment. Section 3(d) of Act June 14, 1948, provided that the amendment of subsec. (a) of this section by section 3(b) of Act June 14, 1948, shall become effective on Oct. 1, 1948.

Effective and Termination Date of 1946 Amendment. Amendment of section by section 502 of Act Aug. 10, 1946 effective only for the period beginning Oct. 1, 1946, and ending with the close of June 30, 1950, see paraphrase of section 504 of such Act Aug. 10, 1946, as amended by Act Aug. 6, 1947, set out as a note under section 303 of this title.

Effective Date of 1939 Amendment. Amendment of subsec. (b) by Act Aug. 10, 1939, was made effective Jan. 1, 1940, by section 102 of such Act.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board", and "he", "him", or "his" for "it" or "its" wherever appearing by Act Aug. 28, 1950, § 361(c), (d).

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

Division of Disbursement and certain other offices and agencies and their functions were consolidated into Fiscal Service of Treasury Department by 1940 Reorg.Plan No. III, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Report to President and Congress; Recommendations as to Continuation and Modification of Amendment. Section 108 (d) of Pub.L. 87-543 provided that: "The Secretary shall submit to the President, for transmission to the Congress prior to January 1, 1967, a full report of the administration of the provisions of the amendments made by this section [to this section and section 606 of this title], including the experiences of each of the States in making protective payments under the provisions of their respective State plans which are in accord with such amendments [to this section and section 606 of this title], together with his recommendations as to continuation of and modifications in such amendments [to this section and section 606 of this title]."

Provision applicable in the case of expenditures under a State plan approved under this subchapter, made during the period beginning Oct. 1, 1962, and ending with the close of June 30, 1967, see section 202(e) of Pub.L. 87-543, set out as Effective Date of 1962 Amendment note under this section.

State Plans in Effect July 25, 1962: Automatic Conformity to Amendments. State plans in effect July 25, 1962 deemed to have been conformed to amendment of subsec. (b) (2) (B) of this section by section 104(a) of Pub.L. 87-543, see section 104(b) of Pub.L. 87-543, set out as a note under section 601 of this title.

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 10, 1946, see 1946 U.S.Code Cong.Service, p. 1510. See, also, Act June 14, 1948, 1948 U.S.Code Cong. Service, p. 1752; Act July 18, 1952, 1952 U.S.Code Cong. and Adm.News, p. 2303; Act Sept. 1, 1954, 1954 U.S.Code Cong. and Adm.News, p. 3710; Pub.L. 85-840, 1958 U.S.Code Cong. and Adm.News, p. 4218.

Cross References

Navajo and Hopi Indians, additional Federal contributions in connection with rehabilitation program, see section 639 of Title 25, Indians.

§ 604. Stopping payments on deviation from required provisions of plan or failure to comply therewith

(a) In the case of any State plan for aid and services to needy families with children which has been approved by the Secretary, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 602(b) of this title, or that in the administration of the plan any such prohibited re-

quirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 602(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State.

(b) No payment to which a State is otherwise entitled under this subchapter for any period before September 1, 1962, shall be withheld by reason of any action taken pursuant to a State statute which requires that aid be denied under the State plan approved under this subchapter with respect to a child because of the conditions in the home in which the child resides; nor shall any such payment be withheld for any period beginning on or after such date by reason of any action taken pursuant to such a statute if provision is otherwise made pursuant to a State statute for adequate care and assistance with respect to such child. Aug. 14, 1935, c. 531, Title IV, § 404, 49 Stat. 628; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361 (c), (d), 64 Stat. 558; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; May 8, 1961, Pub.L. 87–31, § 4, 75 Stat. 77; July 25, 1962, Pub.L. 87–543, Title I, §§ 104(a) (5) (B), 107(b), 76 Stat. 185, 189.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1962 Amendment. Subsec. (a). Pub.L. 87–543, § 104(a) (5) (B), substituted "aid and services to needy families with children" for "aid to dependent children."

Subsec. (b). Pub.L. 87–543, § 107(b), prohibited the withholding of payments from a State on and after Sept. 1, 1962 by reason of any action taken pursuant to a State statute where provision is made pursuant to a State statute for adequate care and assistance of the child.

1961 Amendment. Pub.L. 87–31 designated existing provisions as subsec. (a) and added subsec. (b).

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board", and "he", "him", or "his" for "it" or "its" wherever appearing by Act Aug. 28, 1950.

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

State Plans in Effect July 25, 1962: Automatic Conformity to Amendments. State plans in effect July 25, 1962 deemed to have been conformed to amendment of subsec. (a) of this section by section 104 (a) of Pub.L. 87–543, see section 104(b) of Pub.L. 87–543, set out as a note under section 601 of this title.

Legislative History: For legislative history and purpose of Pub.L. 87–31, see 1961 U.S.Code Cong. and Adm.News, p. 1716.

§ 605. Use of payments for benefit of children

Whenever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child, the State agency may provide for such counseling and guidance services with respect to the use of such payments and the management of other funds by the relative receiving such payments as it deems advisable in order to assure use of such payments in the best interests of such child, and may provide for advising such relative that continued failure to so use such payments will result in substitution therefor of protective payments as provided under section 606 (b) (2) of this title, or in seeking appointment of a guardian or legal representative as provided in section 1311 of this title, or in the imposition of criminal or civil penalties authorized under State law if it is determined by a court of competent jurisdiction that such relative is not using or has not used for the benefit of the child any such payments made for that purpose; and the provision of such services or advice by the State agency (or the taking of the action specified in such advice) shall not serve as a basis for withholding funds from such State under section 604 of this title and shall not prevent such payments with respect to such child from being considered aid to families with dependent children. Aug. 14, 1935, c. 531, Title IV, § 405, 49 Stat. 629; July 25, 1962, Pub.L. 87–543, Title I, § 107(a), 76 Stat. 188.

Library references: Social Security and Public Welfare ⇐194; C.J.S. Social Security and Public Welfare §§ 63, 64.

Historical Note

1962 Amendment. Pub.L. 87-543 substituted provisions relating to use of payments for benefit of children for former provision appropriating $250,000 for fiscal year ending June 30, 1936, to defray expenses of former Social Security Board under sections 601-605 of this title.

§ 606. Definitions

When used in this subchapter—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined in accordance with standards prescribed by the Secretary) a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or

its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child and relative, but only with respect to a State whose State plan approved under section 602 of this title includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to families with dependent children to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(C) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(D) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(E) aid in the form of foster home care in behalf of children described in section 608(a) of this title; and

(F) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made;

(c) The term "relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) of this section and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home. Aug. 14, 1935, c. 531, Title IV, § 406, 49 Stat. 629; Aug. 10, 1939, c. 666, Title IV, § 403, 53 Stat. 1380; Aug. 28, 1950, c. 809, Title III, Pt. 2, § 323 (a), 64 Stat. 551; Aug. 1, 1956, c. 836, Title III, §§ 321, 322, 351(b), 70 Stat. 850, 855; July 25, 1962, Pub.L. 87–543, Title I, §§ 104(a) (3) (D), 108(a), 109, 152, 156(b), 76 Stat. 185, 189, 190, 206, 207; Oct. 13, 1964, Pub.L. 88–641, § 2(a), 78 Stat. 1042.

Historical Note

1964 Amendment. Subsec. (a). Pub.L. 88–641 included within the definition of "dependent child" one who is under the age of 21 and a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

1962 Amendment. Subsec. (b). Pub.L. 87–543, §§ 104(a) (3) (D), 156(b), substituted "aid to families with dependent children" for "aid to dependent children" and inserted "(if provided in or after the third month before the month in which the recipient makes application for aid)" preceding "medical care".

Subsec. (b). Pub.L. 87–543, §§ 108(a), 109, 152, designated existing provisions as par. (1) and added par. (2); inserted in par. (1) "(and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title)" following "relative with whom any dependent child is living"; and deleted from par. (1) "for any month" and "if money payments have been made under the State plan with respect to such child for such month" preceding and following "to meet the needs of the relative with whom any dependent child is living".

1956 Amendment. Subsec. (a). Act Aug. 1, 1956, §§ 321, 322, included first cousins, nephews, and nieces, as persons with whom a needy child may be living, and eliminated the requirement of school attendance for children between the ages of 16 and 18.

Subsec. (b). Act Aug. 1, 1956, § 351(b), eliminated "(except when used in clause (2) of section 603(a) of this title)" preceding "includes money payments or medical care".

1950 Amendment. Subsec. (b). Act Aug. 28, 1950 redefined "aid to dependent children".

Subsec. (c). Act Aug. 28, 1950 added subsec. (c).

1939 Amendment. Subsec. (a). Act Aug. 10, 1939 redefined "dependent child."

Effective Date of 1962 Amendment. Section 202(c) of Pub.L. 87–543 provided that: "The amendments made by sections 102(b) (2) and (d), and 152 [enacting section 728 of this title and amending sections 606(b) (1), 721 and 723(a) of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter] or developed as provided in part 3 of title V of such Act [sections 721–728 of this title], as the case may be, made after June 30, 1962."

Amendment of subsec. (b) of this section by section 108(a) of Pub.L. 87–543

applicable in the case of expenditures under a State plan approved under this subchapter, made during the period beginning Oct. 1, 1962, and ending with the close of June 30, 1967, see section 202(e) of Pub.L. 87-543, set out as a note under section 603 of this title.

Amendment of subsec. (b) of this section by section 109 of Pub.L. 87-543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Sept. 30, 1962, see section 202(d) of Pub.L. 87-543, set out as a note under section 303 of this title.

Amendment of subsec. (b) of this section by section 156(b) of Pub.L. 87-543 applicable in the case of applications made after Sept. 30, 1962, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, see section 156(e) of Pub.L. 87-543, set out as a note under section 306 of this title.

Effective Date of 1956 Amendment. Section 323 of Part III of Title III of Act Aug. 1, 1956 provided that: "The amendments made by this part [to subsec. (a) of this section] shall become effective July 1, 1957."

Amendment of subsec. (b) of this section by section 351(b) of Act Aug. 1, 1956 effective with respect to the fiscal year ending June 30, 1957, and all succeeding fiscal years, see section 351(d) of such Act Aug. 1, 1956, set out as a note under section 603 of this title.

Effective Date of 1950 Amendment. Section 323(b) of Act Aug. 28, 1950, provided that the amendment of subsection (b) and the addition of subsection (c) shall take effect Oct. 1, 1950.

Report to President and Congress; Recommendations as to Continuation and Modification of Amendment. Report of administration of provisions enacted as an amendment of this section by section 108 of Pub.L. 87-543 and relating to protective payments under dependent children program and recommendations as continuation and modification of the provisions, see section 108(d) of Pub.L. 87-543, set out as a note under section 603 of this title.

State Plans in Effect July 25, 1962: Automatic Conformity to Amendments. State plans in effect July 25, 1962 deemed to have been conformed to amendment of subsec. (b) of this section by section 104 (a) of Pub.L. 87-543, see section 104(b) of Pub.L. 87-543, set out as a note under section 601 of this title.

Notes of Decisions

Library references

Social Security and Public Welfare ⇨194.

C.J.S. Social Security and Public Welfare §§ 63, 64.

1. Jurisdiction

Provisions of section 602(a) of this title and this section relating to state plans for aid to dependent children and state statutes enacted pursuant thereto adopting and carrying out federal social security programs could not be held to give county juvenile court jurisdiction over enrolled members of Indian tribes to declare them dependent children and to deprive their parents of their custody. State ex rel. Adams v. Superior Court for Okanogan County, Juvenile Court Session, 1960, 356 P.2d 985, 57 Wash.2d 181.

§ 607. Dependent children of unemployed parents; termination date; definition

Effective for the period beginning May 1, 1961, and ending with the close of June 30, 1967, the term "dependent child" shall, notwithstanding section 606(a) of this title, include a needy child who meets the requirements of section 606(a) (2) of this title, who has been deprived of parental support or care by reason of the unemployment (as defined by the State) of a parent, and who is living with any of the relatives specified in section 606(a) (1) of this title in a place of residence maintained by one or more of such relatives as his (or

their) own home, but only with respect to a State whose State plan approved under section 602 of this title—

(1) includes aid for any such child, and

(2) includes—

(A) provision for entering into cooperative arrangements with the system of public employment offices in the State looking toward employment of the unemployed parents of such children, including appropriate provision for registration and periodic reregistration of the unemployed parent of any such child and for maximum utilization of the job placement services and other services and facilities of such offices, and

(B) provisions to assure that aid to families with dependent children is not provided to any such child or relative if, and for as long as, the unemployed parent refuses without good cause to accept employment, in which he is able to engage, which (i) is offered through such public employment offices, or (ii) is otherwise offered by an employer if the offer is determined by the State or local agency administering the State plan, after notification by such employer, to be a bona fide offer of such employment, and

(3) includes provision (A) for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, looking toward maximum utilization of available public vocational education services and facilities in the State in order to encourage the retraining of individuals capable of being retrained, and (B) for denying aid to families with dependent children to any such child or relative if, and for as long as, the unemployed parent refuses without good cause to undergo any such retraining.

For purposes of the preceding sentence, a State plan may, at the option of the State, provide for the denial of all (or any part) of the aid under the plan to which any child or relative might otherwise be entitled for any month, if the unemployed parent of such child receives unemployment compensation under an unemployment compensation law of a State or of the United States for any week any part of which is included in such month. Aug. 14, 1935, c. 531, Title IV, § 407, as added May 8, 1961, Pub.L. 87–31, § 1, 75 Stat. 75, and amended July 25, 1962, Pub.L. 87–543, Title I, §§ 104(a) (3) (E), 131(a), 134, 76 Stat. 185, 193, 196; Oct. 13, 1964, Pub.L. 88–641, § 2(b), 78 Stat. 1042.

Library references: Social Security and Public Welfare ⇐194; C.J.S. Social Security and Public Welfare §§ 63, 64.

Historical Note

1964 Amendment. Pub.L. 88–641 substituted "needy child who meets the requirements of section 606(a) (2) of this title, who" for "needy child under the age of eighteen who" and "section 606(a) (1) of this title" for "section 606(a) of this title."

1962 Amendment. Pub.L. 87–543 extended termination date from June 30,

1962 to June 30, 1967, substituted "aid to families with dependent children" for "aid to dependent children" in cl. (2) (B) designated existing provisions as cl. (3) (A), and added cl. (3) (B).

Effective Date of 1962 Amendment. Amendment of par. (3) of this section by section 134 of Pub.L. 87-543 effective July 1, 1963, see section 202(a) of Pub.L. 87-543, set out as a note under section 302 of this title.

State Plans in Effect July 25, 1962: Automatic Conformity to Amendments. State plans in effect July 25, 1962 deemed to have been conformed to amendment of clause (2) (B) of this section by section 104(a) of Pub.L. 87-543, see section 104 (b) of Pub.L. 87-543, set out as a note under section 601 of this title.

Legislative History: For legislative history and purpose of Pub.L. 87-31 see 1961 U.S.Code Cong. and Adm.News, p. 1716.

§ 608. Payment to States for foster home care of dependent children; definitions

Effective for the period beginning May 1, 1961—

(a) the term "dependent child" shall, notwithstanding section 606(a) of this title, also include a child (1) who would meet the requirements of such section 606(a) or of section 607 of this title except for his removal after April 30, 1961, from the home of a relative (specified in such section 606(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child, (2) whose placement and care are the responsibility of (A) the State or local agency administering the State plan approved under section 602 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made an agreement which is still in effect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph (f) (1) and such other provisions as may be necessary to assure accomplishment of the objectives of the State plan approved under section 602 of this title, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who received aid under such State plan in or for the month in which court proceedings leading to such determination were initiated;

(b) the term "aid to families with dependent children" shall, notwithstanding section 606(b) of this title, include also foster care in behalf of a child described in paragraph (a) of this section—

(1) in the foster family home of any individual, whether the payment therefor is made to such individual or to a public or nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payment therefor is made to such institution or to a public or nonprofit private child-placement or child-care agency, but subject to limitations prescribed by the Secretary with a view

to including as "aid to families with dependent children" in the case of such foster care in such institutions only those items which are included in such term in the case of foster care in the foster family home of an individual.

(c) the number of individuals counted under clause (A) of section 603(a) (1) of this title for any month shall include individuals (not otherwise included under such clause) with respect to whom expenditures were made in such month as aid to families with dependent children in the form of foster care; and

(d) services described in paragraph (f) (2) of this section shall be considered as part of the administration of the State plan for purposes of section 603(a) (3) and (4) of this title;

but only with respect to a State whose State plan approved under section 602 of this title—

(e) includes aid for any child described in paragraph (a) of this section, and

(f) includes provision for (1) development of a plan for each such child (including periodic review of the necessity for the child's being in a foster family home or child-care institution) to assure that he receives proper care and that services are provided which are designed to improve the conditions in the home from which he was removed or to otherwise make possible his being placed in the home of a relative specified in section 606(a) of this title, and (2) use by the State or local agency administering the State plan, to the maximum extent practicable, in placing such a child in a foster family home or child-care institution, of the services of employees, of the State public-welfare agency referred to in section 722(a) of this title (relating to allotments to States for child welfare services under sections 721–728 of this title) or of any local agency participating in the administration of the plan referred to in such section, who perform functions in the administration of such plan.

For purposes of this section, the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing homes of this type, as meeting the standards established for such licensing; and the term "child-care institution" means a nonprofit private child-care institution which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing. Aug. 14, 1935, c. 531, Title IV, § 408, as added May 8, 1961, Pub.L. 87–31, § 2, 75 Stat. 76, and amended July 25, 1962, Pub.L. 87–543, Title I, §§ 101(b) (2) (D), 104(a) (3) (F), (G), 131(b), 135(a)–(d), 155(a), 76 Stat. 180, 185, 193, 196, 207.

Library references: Social Security and Public Welfare ⇐191; C.J.S. Social Security and Public Welfare §§ 63, 64.

Historical Note

1962 Amendment. Pub.L. 87-543, § 131 (b), deleted from the introductory phrase ", and ending with the close of June 30, 1962" following "May 1, 1961."

Par. (a) (2). Pub.L. 87-543, § 155(a), incorporated existing provisions in (A) and added (B).

Par. (a) (3). Pub.L. 87-543, § 135(a), inserted "or child-care institution" following "foster family home."

Par. (b). Pub.L. 87-543, §§ 104(a) (3) (F), 135(b), substituted "aid to families with dependent children" for "aid to dependent children" in provisions designated cl. (1), and designated existing provisions as cl. (1), added to such cl. (1) "whether the payment therefor is made to such individual or to a public or nonprofit private child-placement or child-care agency, or" and added cl. (2).

Par. (c). Pub.L. 87-543, § 104(a) (3) (G), substituted "aid to families with dependent children" for "aid to dependent children."

Par. (d). Pub.L. 87-543, § 101(b) (2) (D), inserted "and (4)" following "section 603(a) (3)."

Par. (f) (1), (2). Pub.L. 87-543, § 135 (c), inserted "or child-care institution" following "foster family home."

Pub.L. 87-543, § 135(d), inserted provisions in last sentence defining "child-care institution."

Effective Date of 1962 Amendment. Section 135(e) of Pub.L. 87-543, as amended by Pub.L. 88-641, § 1, Oct. 13, 1964, 78 Stat. 1042, provided that: "The amendments made by the preceding provisions of this section [to this section] shall be effective only in the case of expenditures under a State plan approved under title IV of the Social Security Act [this subchapter] made during the period beginning October 1, 1962, and ending with the close of June 30, 1967."

Amendment of par. (d) of this section by section 101(b) (2) (D) of Pub.L. 87-543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, see section 202(f) of Pub.L. 87-543, set out as a note under section 303 of this title.

Effective Date of 1962 Amendment; Report to President and Congress; Recommendations as to Continuation and Modification of Amendment. Section 155(b) of Pub.L. 87-543, as amended by Pub.L. 88-48, June 29, 1963, 77 Stat. 70; Pub.L. 88-345, June 30, 1964, 78 Stat. 235, provided that: "The amendment made by subsection (a) [to par. (a) (2) of this section] shall apply only for the period beginning October 1, 1962, and ending with the close of June 30, 1967. The Secretary shall submit to the President, for transmission to the Congress prior to December 31, 1963, a full report of the administration of the provisions of the amendment made by subsection (a) [to par. (a) (2) of this section], including the experiences of each of the States in arranging for foster care under the provisions of their respective State plans which are in accord with such amendment, together with his recommendations as to continuation of, and modifications in, such amendment."

State Plans in Effect July 25, 1962: Automatic Conformity to Amendments. State plans in effect July 25, 1962 deemed to have been conformed to amendment of pars. (b), (c) of this section by section 104(a) of Pub.L. 87-543, see section 104 (b) of Pub.L. 87-543, set out as a note under section 601 of this title.

Legislative History: For legislative history and purpose of Pub.L. 87-31, see 1961 U.S.Code Cong. and Adm.News, p. 1716.

§ 609. Community work and training programs

(a) For the purpose of assisting the States in encouraging, through community work and training programs of a constructive nature, the conservation of work skills and the development of new skills for individuals who have attained the age of 18 and are receiving aid to families with dependent children, under conditions which are designed to assure protection of the health and welfare of such individuals and the dependent children involved, expenditures (other than for medical or any other type of remedial care) for any month

with respect to a dependent child (including payments to meet the needs of any relative or relatives, specified in section 606(a) of this title, with whom he is living) under a State plan approved under section 602 of this title shall not be excluded from aid to families with dependent children because such expenditures are made in the form of payments for work performed in such month by any one or more of the relatives with whom such child is living if such work is performed for the State agency or any other public agency under a program (which need not be in effect in all political subdivisions of the State) administered by or under the supervision of such State agency, if there is State financial participation in such expenditures, and if such State plan includes—

(1) provisions which, in the judgment of the Secretary, provide reasonable assurance that—

(A) appropriate standards for health, safety, and other conditions applicable to the performance of such work by such relatives are established and maintained;

(B) payments for such work are at rates not less than the minimum rate (if any) provided by or under State law for the same type of work and not less than the rates prevailing on similar work in the community;

(C) such work is performed on projects which serve a useful public purpose, do not result either in displacement of regular workers or in the performance by such relatives of work that would otherwise be performed by employees of public or private agencies, institutions, or organizations, and (except in cases of projects which involve emergencies or which are generally of a nonrecurring nature) are of a type which has not normally been undertaken in the past by the State or community, as the case may be;

(D) in determining the needs of any such relative, any additional expenses reasonably attributable to such work will be considered;

(E) any such relative shall have reasonable opportunities to seek regular employment and to secure any appropriate training or retraining which may be available;

(F) any such relative will, with respect to the work so performed, be covered under the State workmen's compensation law or be provided comparable protection; and

(G) aid under the plan will not be denied with respect to any such relative (or the dependent child) for refusal by such relative to perform any such work if he has good cause for such refusal;

(2) provision for entering into cooperative arrangements with the system of public employment offices in the State looking to-

ward employment or occupational training of any such relatives performing work under such program, including appropriate provision for registration and periodic reregistration of such relatives and for maximum utilization of the job placement services and other services and facilities of such offices;

(3) provision for entering into cooperative arrangements with the State agency or agencies responsible for administering or supervising the administration of vocational education and adult education in the State, looking toward maximum utilization of available public vocational or adult education services and facilities in the State in order to encourage the training or retraining of any such relatives performing work under such program and otherwise assist them in preparing for regular employment;

(4) provision for assuring appropriate arrangements for the care and protection of the child during the absence from the home of any such relative performing work under such program in order to assure that such absence and work will not be inimical to the welfare of the child;

(5) provision that there will be no adjustment or recovery by the State or any political subdivision thereof on account of any payments which are correctly made for such work; and

(6) such other provisions as the Secretary finds necessary to assure that the operation of such program will not interfere with achievement of the objectives set forth in section 601 of this title.

(b) In the case of any State which makes expenditures in the form described in subsection (a) of this section under its State plan approved under section 602 of this title, the proper and efficient administration of the State plan, for purposes of section 603(a) (3) and (4) of this title, may not include the cost of making or acquiring materials or equipment in connection with the work performed under a program referred to in subsection (a) of this section or the cost of supervision of work under such program, and may include only such other costs attributable to such programs as are permitted by the Secretary. Aug. 14, 1935, c. 531, Title IV, § 409, as added July 25, 1962, Pub.L. 87–543, Title I, § 105(a), 76 Stat. 186, and amended July 25, 1962, Pub.L. 87–543, Title I, § 101(b) (2) (E), 76 Stat. 180.

Library references: Infants ⇐14; Social Security and Public Welfare ⇐194; C.J.S. Infants § 12; C.J.S. Social Security and Public Welfare §§ 63, 64.

Historical Note

1962 Amendment. Subsec. (b). Pub.L. 87–543, § 101(b) (2) (E), inserted "and (4)" following "section 603(a) (3)."

Effective Date of 1962 Amendment. Amendment of subsec. (b) of this section by section 101(b) (2) (E) of Pub.L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, see section 202(f) of Pub.L. 87–543, set out as a note under section 303 of this title.

Effective Date. Section applicable in the case of expenditures under a State plan approved under this subchapter,

made during the period beginning Oct. 1, 1962, and ending with the close of June 30, 1967, see section 202(e) of Pub. L. 87-543, set out as a note under section 603 of this title.

Report to President and Congress; Recommendations as to Continuation and Modification of Programs. Section 105 (b) of Pub.L. 87-543 provided that: "The Secretary shall submit to the President, for transmission to the Congress prior to January 1, 1967, a full report of the administration of the provisions of the amendment made by subsection (a) [enacting this section], including the experiences of each of the States in paying for work under community work and training programs under the provisions of their respective State plans which are in accord with such amendment, together with his recommendations as to continuation of and modifications in such amendment."

Provision applicable in the case of expenditures under a State plan approved under this subchapter, made during the period beginning Oct. 1, 1962, and ending with the close of June 30, 1967, see section 202(e) of Pub.L. 87-543, set out as Effective Date of 1962 Amendment note under section 603 of this title.

Expenditures Deemed Made Under State Plans and Constituting Aid to Dependent Children or Aid to Families with Dependent Children. Section 105(c) of Pub. L. 87-543 provided that: "Expenditures (other than for medical or any other type of remedial care) made at any time during the period beginning July 1, 1961, and ending with the close of September 30, 1962, which would have been considered aid to dependent children or aid to families with dependent children, as the case may be, under a State plan approved under title IV of the Social Security Act [this subchapter] except that they were made in the form of payments for work performed by a relative with whom a dependent child (as defined in section 406 or 407 of such Act [section 606 or 607 of this title]) is living, shall be deemed to have been made under a State plan approved under title IV of the Social Security Act [this subchapter] and to constitute aid to dependent children or aid to families with dependent children, as the case may be, if (1) such expenditures were made under conditions which meet the requirements set forth in section 409 of such Act (added by subsection (a) of this section) [this section], other than subparagraphs (D) and (F) of subsection (a) (1) thereof [subpars. (D) and (F) of subsec. (a) (1) of this section] and other than the requirement that the State agency (administering or supervising the administration of such plan) be administering or supervising the administration of the program under which such work is performed, and (2) at the time such expenditures were made, such State plan met the requirements of paragraphs (1), (2), and (3) of section 407 of the Social Security Act [section 607 of this title]. The costs of administration of any such State plan may include, with respect to expenditures described in the preceding sentence, only such costs as are permitted in accordance with the provisions of subsection (b) of such section 409 [subsec. (b) of this section]."

SUBCHAPTER V.—GRANTS TO STATES FOR MATERNAL AND CHILD WELFARE

MATERNAL AND CHILD HEALTH SERVICES

§ 701. Appropriations

For the purpose of enabling each State to extend and improve, as far as practicable under the conditions in such State, services for promoting the health of mothers and children, especially in rural areas and in areas suffering from severe economic distress, the following sums are hereby authorized to be appropriated: $25,000,000 for the fiscal year ending June 30, 1963, $30,000,000 for the fiscal year ending June 30, 1964, $35,000,000 for the fiscal year ending June 30, 1965, $40,000,000 each for the fiscal year ending June 30, 1966, and the succeeding fiscal year, $45,000,000 each for the fiscal year ending

June 30, 1968, and the succeeding fiscal year, and $50,000,000 each for the fiscal year ending June 30, 1970, and succeeding fiscal years. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Federal Security Administrator, State plans for such services. Aug. 14, 1935, c. 531, Title V, § 501, 49 Stat. 629; Aug. 10, 1939, c. 666, Title V, § 501, 53 Stat. 1380; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 401 (b) (1), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 3, § 331(a), Pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub.L. 85–840, Title VI, § 602(a), 72 Stat. 1054; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(a) (1) (A), 74 Stat. 995; Oct. 24, 1963, Pub.L. 88–156, § 2(a), 77 Stat. 273.

Library references: Infants ⇐13; Social Security and Public Welfare ⇐191; United States ⇐85; C.J.S. Infants § 11 et seq.; C.J.S. Social Security and Public Welfare § 56; C.J.S. United States § 123.

Historical Note

1963 Amendment. Pub.L. 88–156 increased the appropriation from $25,000,000 for each fiscal year beginning after June 30, 1960 to $30,000,000 for fiscal year ending June 30, 1964; $35,000,000 for fiscal year ending June 30, 1965; $40,000,000 each for fiscal years ending June 30, 1966 and 1967; $45,000,000 each for fiscal years ending June 30, 1968 and 1969, and $50,000,000 each for fiscal year ending June 30, 1970 and succeeding fiscal years.

1960 Amendment. Pub.L. 86–778 increased the appropriation from $21,500,000 to $25,000,000 for each fiscal year beginning after June 30, 1960.

1958 Amendment. Pub.L. 85–840 increased the appropriation from $16,500,000 to $21,500,000 for each fiscal year beginning after June 30, 1958.

1950 Amendment. Act Aug. 28, 1950, § 331(a), increased appropriations from $11,000,000 annually to $15,000,000 for fiscal year 1951 and to $16,500,000 for each fiscal year thereafter.

1946 Amendment. Act Aug. 10, 1946 increased appropriations from $5,820,000 to $11,000,000.

1939 Amendment. Act Aug. 10, 1939 increased appropriations from $3,800,000 to $5,820,000.

Effective Date of 1960 Amendment. Section 707(c) of Pub.L. 86–778 provided that: "The amendments made by this section [adding section 726 of this title and amending this section and sections 702(a) (2), (b), 704(c), 711, 712(a), (2), (b), 714(c), 721 and 722(a) of this title] shall be effective only with respect to fiscal years beginning after June 30, 1960."

Effective Date of 1950 Amendment. Section 331(f) of Act Aug. 28, 1950, provided that the amendment of this section shall be effective with respect to fiscal years beginning after June 30, 1950.

Effective Date of 1946 Amendment. Section 401(b) of Act Aug. 10, 1946 provided in part that the amendments to sections 701, 702, 711, 712, 721 and 741 of this title shall be effective with respect to the fiscal year ending June 30, 1947, and subsequent fiscal years.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Children's Bureau", "Chief of Children's Bureau" and "Secretary of Labor" wherever appearing by Act Aug. 28, 1950, § 361(e).

Identical changes were effected by 1946 Reorg.Plan No. 2, set out in note under section 133y—16 of Title 5, Executive Departments and Government Officers and Employees, which transferred the Children's Bureau to the Federal Security Agency and certain of its functions, as well as all functions of the Secretary of Labor under sections 701–731 of this

title to the Federal Security Administrator. For assignment of these functions within the Federal Security Agency, see note under section 902 of this title.

Allotments for Fiscal Year 1947. Section 401(c) of Act Aug. 10, 1946, provided: "The amendments made by subsection (b) [of section 401 of said act to sections 701, 702, 711, 712, 721, 731 of this title] shall not require amended allotments for the fiscal year 1947 until sufficient appropriations have been made to carry out such amendments, and allotments from such appropriations shall be made in amounts not exceeding the amounts authorized by the amendments made by this section [to said sections and section 1301 of this title]."

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 10, 1946, see 1946 U.S.Code Cong.Service, p. 1510. See, also, Act Aug. 28, 1950, 1950 U.S.Code Cong. Service, p. 3287; Pub.L. 85-840, 1958 U.S. Code Cong. and Adm.News, p. 4218; Pub. L. 86-778, 1960 U.S.Code Cong. and Adm. News, p. 3608; Pub.L. 88-156, 1963 U.S. Code Cong. and Adm.News, p. 1018.

§ 702. Allotments to States

(a) The Secretary shall allot one-half of the sum appropriated pursuant to section 701 of this title for each fiscal year as follows: He shall allot to each State $70,000 and such part of the remainder of such one-half as he finds that the number of live births in such State bore to the total number of live births in the United States in the latest calendar year for which he has statistics.

(b) The Secretary shall also allot to the States (in addition to the allotments made under subsection (a) of this section) the remaining one-half of the sum appropriated for each fiscal year pursuant to section 701 of this title. Such one-half shall be allotted from time to time according to the financial need of each State for assistance in carrying out its State plan, as determined by the Administrator after taking into consideration the number of live births in such State; except that not more than 25 per centum of such one-half shall be available for grants to State health agencies (administering or supervising the administration of a State plan approved under section 703 of this title), and to public or other nonprofit institutions of higher learning (situated in any State), for special projects of regional or national significance which may contribute to the advancement of maternal and child health.

(c) The amount of any allotment to a State under subsection (a) of this section for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under section 704 of this title until the end of the second succeeding fiscal year. No payment to a State under section 704 of this title shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available. Aug. 14, 1935, c. 531, Title V, § 502, 49 Stat. 629; Aug. 10, 1939, c. 666, Title V, § 502, 53 Stat. 1380; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 401(b) (2, 3), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 3, § 331(b), Pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub.L. 85-840, Title VI, § 602(b) (c), 72 Stat. 1055; Sept. 13, 1960, Pub.L. 86-778, Title VII, § 707(a) (1) (B), (C), (b) (1) (A),

74 Stat. 995, 996; Oct. 24, 1963, Pub.L. 88–156, § 2(b), (c), 77 Stat. 273.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1963 Amendment. Subsec. (a). Pub.L. 88–156, § 2(b), eliminated par. (1), which had provided out of the appropriation under section 701 of this title $7,500,000 for allotment among the States for fiscal year ending June 30, 1951, $60,000 outright to each State and the remainder under an allotment formula; and designated par. (2) as subsec. (a), substituted therein provision for allotment among the States of one-half of the sum appropriated for each fiscal year pursuant to section 701 of this title for former provision allotting among the States out of the appropriation under such section 701 the sum of $12,500,000 for each fiscal year beginning after June 30, 1960 and omitted following the $70,000 outright allotment to each State "(even though the amount appropriated for such year is less than $25,000,000)."

Subsec. (b). Pub.L. 88–156, § 2(c), substituted the provision of the first sentence for allotment to the States of one-half of the sum appropriated for each fiscal year pursuant to section 701 of this title for former provision allotting to the States out of the appropriation under such section 701 the sum of $12,500,000 for each fiscal year beginning after June 30, 1960 and substituted in the second sentence "Such one-half" and "such one-half" for "Such sums" and "such sum", respectively.

1960 Amendment. Subsec. (a) (2). Pub. L. 86–778, § 707(a) (1) (B), increased the total allotment to the States from $10,750,000 to $12,500,000 for each fiscal year beginning after June 30, 1960, and required the Secretary to allot $70,000 each fiscal year to each State even though the amount appropriated for such year is less than $25,000,000.

Subsec. (b). Pub.L. 86–778, § 707(a) (1) (C), (b) (1) (A), increased the total allotment to the States from $10,750,000 to $12,500,000 for each fiscal year beginning after June 30, 1960, inserted words "from time to time" after "shall be allotted", and limited to not more than 25 per centum of such sums the amount available for grants to State health agencies and to public or other nonprofit institutions of higher learning for special projects of regional or national significance which may contribute to the advancement of maternal and child health.

1958 Amendment. Subsec. (a) (2). Pub. L. 85–840, § 602(b), increased the total allotment to the States from $8,250,000 to $10,750,000 for each fiscal year beginning after June 30, 1958, and required the Secretary to allot $60,000 each fiscal year to each State even though the amount appropriated for the fiscal year is less than $21,500,000.

Subsec. (b). Pub.L. 85–840, § 602(c), increased the total allotment to the States from $8,250,000 to $10,750,000 for each fiscal year beginning after June 30, 1958.

1950 Amendment. Subsec. (a). Act Aug. 28, 1950, § 331(b), increased the total allotment to the States from $5,500,000 to $7,500,000, and the basic allotment to each State from $35,000 to $60,000 for the fiscal year 1951, and increased the total allotment to the States to $8,250,000 with the same $60,000 basic State allotment for fiscal years thereafter.

Subsec. (b). Act Aug. 28, 1950, § 331(b), increased the total allotment to the State from $5,500,000, to $7,500,000 for fiscal year 1951 and to $8,250,000 for fiscal years thereafter.

1946 Amendment. Subsec. (a). Act Aug. 10, 1946, § 401(b) (2), increased the allotments to $5,500,000 with each State getting $35,000 and a proportionate part of the remainder of the $5,500,000.

Subsec. (b). Act Aug. 10, 1946, § 401(b) (3), increased thee allotment from $1,980,000 to $5,500,000.

1939 Amendment. Subsec. (a). Act Aug. 10, 1939 increased the allotment from $1,800,000 to $2,800,000.

Subsec. (b). Act Aug. 10, 1939 increased the allotment from $980,000 to $1,980,000.

Effective Date of 1960 Amendment. Amendment of subsecs. (a) (2) and (b) of this section by Pub.L. 86–778 effective only with respect to fiscal years beginning after June 30, 1960, see section 707 (c) of Pub.L. 86–778, set out as a note under section 701 of this title.

Effective Date of 1950 Amendment. Section 331(f) of Act Aug. 28, 1950, provided that the amendment of subsections (a) and (b) of this section, sections 711, 712(a), (b), and 721(a) of this title shall be effective with respect to fiscal years beginning after June 30, 1950.

Effective Date of 1946 Amendment. Effective date and allotments for fiscal year 1947, see notes under section 701 of this title.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Children's Bureau", "Chief of Children's Bureau" and "Secretary of Labor" wherever appearing by Act Aug. 28, 1950, § 361(e).

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 701 of this title.

Special Projects for Mentally Retarded Children. Pub.L. 88-605, Title II, § 200, Sept. 19, 1964, 78 Stat. 976, provided in part: "That $3,500,000 of the amount available under section 502(b) of such Act [subsec. (b) of this section] shall be used only for special projects for mentally retarded children."

Similar provisions were contained in the following prior Appropriation Acts:

1963—Oct. 11, 1963, Pub.L. 88-136, Title II, § 200, 77 Stat. 240.
1962—Aug. 14, 1962, Pub.L. 87-582, Title II, § 200, 76 Stat. 376.
1961—Sept. 22, 1961, Pub.L. 87-290, Title II, § 201, 75 Stat. 606.
1960—Sept. 2, 1960, Pub.L. 86-703, Title II, § 201, 74 Stat. 770.
1959—Aug. 14, 1959, Pub.L. 86-158, Title II, § 201, 73 Stat. 353.
1958—Aug. 1, 1958, Pub.L. 85-580, Title II, § 201, 72 Stat. 472.
1957—June 29, 1957, Pub.L. 85-67, Title II, § 201, 71 Stat. 222.
1956—June 29, 1956, c. 477, Title II, § 201, 70 Stat. 434.

Definition of "Secretary". "Secretary" as used in amendments to this chapter made by Pub.L. 85-840 means the Secretary of Health, Education, and Welfare, see section 702 of Pub.L. 85-840, set out as a note under section 402 of this title.

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 10, 1946, see 1946 U.S.Code Cong.Service, p. 1510. See, also, Pub.L. 85-840, 1958 U.S.Code Cong. and Adm.News, p. 4218; Pub.L. 86-778, 1960 U.S.Code Cong. and Adm.News, p. 3608; Pub.L. 88-156, 1963 U.S.Code Cong. and Adm.News, p. 1018.

§ 703. State plans; contents; approval by Administrator

(a) A State plan for maternal and child-health services must (1) provide for financial participation by the State; (2) provide for the administration of the plan by the State health agency or the supervision of the administration of the plan by the State health agency; (3) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Administrator shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are necessary for the proper and efficient operation of the plan; (4) provide that the State health agency will make such reports, in such form and containing such information, as the Administrator may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports; (5) provide for the extension and improvement of local maternal and child-health services administered by local child-health units; (6) provide for cooperation with medical, nursing, and welfare groups and organizations;

and (7) provide for the development of demonstration services in needy areas and among groups in special need.

(b) The Administrator shall approve any plan which fulfills the conditions specified in subsection (a) of this section and shall thereupon notify the State health agency of his approval. Aug. 14, 1935, c. 531, Title V, § 503, 49 Stat. 630; Aug. 10, 1939, c. 666, Title V, § 503, 53 Stat. 1380; 1946 Reorg.Plan No. 2, §§ 1, 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), 64 Stat. 558.

Historical Note

Codification. Provision of subsection (b) of this section providing that the Chief of the Children's Bureau should notify the Secretary of Labor of the approval of a plan was omitted under the authority of 1946 Reorg.Plan No. 2 § 1.

1939 Amendment. Subsec. (a) (3). Act Aug. 10, 1939 provided methods relating to the establishment and maintenance of personnel standards on a merit basis.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board", "Chief of Children's Bureau", and "Secretary of Labor", by Act Aug. 28, 1950.

Identical changes were effected by 1946 Reorg.Plan No. 2, §§ 1, 4. See notes to sections 701 and 902 of this title.

"Administrator" was substituted for "Board", "Secretary of Labor", and "Chief of the Children's Bureau" since the functions of all three under this section were transferred to the Federal Security Administrator by 1946 Reorg.Plan No. 2; see notes to sections 701 and 902 of this title. For this reason a provision of subsec. (b) that the Chief of the Children's Bureau should notify the Secretary of Labor of the approval of a plan was omitted.

Notes of Decisions

Library references

Infants ⚖13.
Social Security and Public Welfare ⚖191.
C.J.S. Infants § 11 et seq.
C.J.S. Social Security and Public Welfare § 56.

1. Injunction

State court had no jurisdiction to enjoin State Board of Health from operating under plans adopted by former Board, subject to approval by former Federal Children's Bureau, for disbursing state's allotment under Federal appropriation for maternity and infant care of wives and infants of certain men in armed forces or to require amendment of plans so as not to exclude osteopaths, since in adopting and administering such plans, State Board of Health acted merely as agency of Federal Government, not subject to control by state courts. State Bd. of Health v. Wilson, Tex.Civ.App. 1945, 188 S.W.2d 999.

§ 703a. Same; obstetrical services; approval by Administrator

Any State plan which provides standards for professional obstetrical services in accordance with the laws of the State shall be approv-

ed by the Administrator. Pub.L. 88–605, Title II, § 200, Sept. 19, 1964, 78 Stat. 976.

Library references: Social Security and Public Welfare ⇐191; C.J.S. Social Security and Public Welfare § 56.

Historical Note

Codification. Section is from the Department of Health, Education, and Welfare Appropriation Act, 1965, and is not a part of the Social Security Act which comprises this chapter.

Similar Provisions. Similar provisions were contained in the following prior Appropriation Acts:

1963—Oct. 11, 1963, Pub.L. 88–136, Title II, § 200, 77 Stat. 240.
1962—Aug. 14, 1962, Pub.L. 87–582, Title II, § 200, 76 Stat. 376.
1961—Sept. 22, 1961, Pub.L. 87–290, Title II, § 201, 75 Stat. 605.
1960—Sept. 2, 1960, Pub.L. 86–703, Title II, § 201, 74 Stat. 770.
1959—Aug. 14, 1959, Pub.L. 86–158, Title II, § 201, 73 Stat. 353.
1958—Aug. 1, 1958, Pub.L. 85–580, Title II, § 201, 72 Stat. 472.
1957—June 29, 1957, Pub.L. 85–67, Title II, § 201, 71 Stat. 222.
1956—June 29, 1956, c. 477, Title II, § 201, 70 Stat. 434.
1955—Aug. 1, 1955, c. 437, Title II, § 201, 69 Stat. 408.
1954—July 2, 1954, c. 457, Title II, § 201, 68 Stat. 444.
1953—July 31, 1953, c. 296, Title II, § 201, 67 Stat. 255.
1952—July 5, 1952, c. 575, Title II, § 201, 66 Stat. 368.
1951—Aug. 31, 1951, c. 373, Title II, § 201, 65 Stat. 219.
1950—Sept. 6, 1950, c. 896, Ch. V, Title II, § 201, 64 Stat. 653.
1949—June 29, 1949, c. 275, Title II, § 201, 63 Stat. 284.
1948—June 16, 1948, c. 472, Title I, § 101, 62 Stat. 447.
1947—July 8, 1947, c. 210, Title II, § 201, 61 Stat. 273.
1946—July 26, 1946, c. 672, Title I, § 101, 60 Stat. 681.
1945—July 3, 1945, c. 263, Title I, § 101, 59 Stat. 363.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Chief of the Children's Bureau" by 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1095. See note under section 701 of this title.

§ 704. Payment to States; computation of amounts

(a) From the sums appropriated therefor and the allotments available under section 702(a) of this title, the Secretary of the Treasury shall pay to each State which has an approved plan for maternal and child-health services, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Administrator shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State

containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such investigation as he may find necessary.

(2) The Administrator shall then certify the amount so estimated by him to the Secretary of the Treasury, reduced or increased, as the case may be, by any sum by which the Administrator finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Administrator for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Administrator, the amounts so certified.

(c) The Administrator shall from time to time certify to the Secretary of the Treasury the amounts to be paid to the States from the allotments available under section 702(b) of this title, and the Secretary of the Treasury shall, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, make payments of such amounts from such allotments at the time or times specified by the Administrator. Payments of grants for special projects under section 702(b) of this title may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants. Aug. 14, 1935, c. 531, Title V, § 504, 49 Stat. 630; 1940 Reorg.Plan No. III, § 1(a), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), 64 Stat. 558; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(b) (1) (B), 74 Stat. 996.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1960 Amendment. Subsec. (c). Pub.L. 86–778 permitted payments of grants for special projects under section 702(b) of this title to be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine, and required such payments to be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants.

Effective Date of 1960 Amendment. Amendment of subsec. (c) of this section by Pub.L. 86–778 effective only with

respect to fiscal years beginning after June 30, 1960, see section 707(c) of Pub. L. 86-778, set out as a note under section 701 of this title.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Children's Bureau", "Chief of Children's Bureau" and "Secretary of Labor" wherever appearing by Act Aug. 28, 1950.

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 701 of this title.

Division of Disbursement and certain other offices and agencies and their functions were consolidated into Fiscal Service of Treasury Department by 1940 Reorg.Plan No. III, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Legislative History: For legislative history and purpose of Pub.L. 86-778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

§ 704a. Allotments excluded from computation

An allotment to a State pursuant to section 702(b) or 712(b) of this title shall not be included in computing for the purposes of subsections (a) and (b) of sections 704 and 714 of this title an amount expended or estimated to be expended by the State. Pub.L. 88-605, Title II, § 200, Sept. 19, 1964, 78 Stat. 975.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

Codification. Section is from the Department of Health, Education, and Welfare Appropriation Act, 1965, and is not a part of the Social Security Act which comprises this chapter.

Similar Provisions. Similar provisions were contained in the following prior Appropriation Acts:

1963—Oct. 11, 1963, Pub.L. 88-136, Title II, § 200, 77 Stat. 240.
1962—Aug. 14, 1962, Pub.L. 87-582, Title II, § 200, 76 Stat. 376.
1961—Sept. 22, 1961, Pub.L. 87-290, Title II, § 201, 75 Stat. 605.
1960—Sept. 2, 1960 Pub.L. 86-703, Title II, § 201, 74 Stat. 770.
1959—Aug. 14, 1959, Pub.L. 86-158, Title II, § 201, 73 Stat. 353.
1958—Aug. 1, 1958, Pub.L. 85-580, Title II, § 201, 72 Stat. 472.
1957—June 29, 1957, Pub.L. 85-67, Title II, § 201, 71 Stat. 222.
1956—June 29, 1956, c. 477, Title II, § 201, 70 Stat. 434.
1955—Aug. 1, 1955, c. 437, Title II, § 201, 69 Stat. 409.
1954—July 2, 1954, c. 457, Title II, § 201, 68 Stat. 444.
1953—July 31, 1953, c. 296, Title II, § 201, 67 Stat. 255.
1952—July 5, 1952, c. 575, Title II, § 201, 66 Stat. 368.
1951—Aug. 31, 1951, c. 373, Title II, § 201, 65 Stat. 220.
1950—Sept. 6, 1950, c. 896, Ch. V, Title II, § 201, 64 Stat. 653.
1949—June 29, 1949, c. 275, Title II, § 201, 63 Stat. 284.
1948—June 16, 1948, c. 472, Title I, § 101, 62 Stat. 447.
1947—July 8, 1947, c. 210, Title II, § 201, 61 Stat. 273.
1946—July 26, 1946, c. 672, Title I, § 101, 60 Stat. 681.
1945—July 3, 1945, c. 263, Title I, 59 Stat. 364.
1944—June 28, 1944, c. 302, Title I, § 1, 58 Stat. 550.
1943—July 12, 1943, c. 221, Title I, § 1, 57 Stat. 497.
1942—July 2, 1942, c. 475, Title I, 56 Stat. 565.
1941—July 1, 1941, c. 269, Title I, 55 Stat. 469.
1940—June 26, 1940, c. 428, Title I, 54 Stat. 578.
1939—Aug. 9, 1939, c. 633, Title I, § 1, 53 Stat. 1320.
1939—June 29, 1939, c. 249, § 1, 53 Stat. 924.
1938—Apr. 27, 1938, c. 180, Title IV, § 1, 52 Stat. 288.
1937—June 16, 1937, c. 359, Title IV, § 1, 50 Stat. 301.
1936—May 15, 1936, c. 405, § 1, 49 Stat. 1350.

§ 704b. Nonavailability of allotments after close of fiscal year

No allotment for this or any succeeding fiscal year under this subchapter shall be available after the close of such fiscal year except as may be necessary to liquidate obligations incurred during such year. July 5, 1952, c. 575, Title II, § 201, 66 Stat. 368.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

Codification. Section is from the Federal Security Agency Appropriation Act, 1953, and is not a part of the Social Security Act which comprises this chapter.

§ 705. Stopping payment on failure to comply with plan

In the case of any State plan for maternal and child-health services which has been approved by the Administrator, if the Administrator, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds that in the administration of the plan there is a failure to comply substantially with any provision required by section 703 of this title to be included in the plan, he shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State. Aug. 14, 1935, c. 531, Title V, § 505, 49 Stat. 631; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), 64 Stat. 558.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Children's Bureau", "Chief of Children's Bureau" and "Secretary of Labor" wherever appearing by Act Aug. 28, 1950.

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 701 of this title.

Services for Crippled Children

§ 711. Appropriations

For the purpose of enabling each State to extend and improve (especially in rural areas and in areas suffering from severe economic

distress), as far as practicable under the conditions in such State, services for locating crippled children, and for providing medical, surgical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and aftercare, for children who are crippled or who are suffering from conditions which lead to crippling, the following sums are hereby authorized to be appropriated: $25,000,000 for the fiscal year ending June 30, 1963, $30,000,000 for the fiscal year ending June 30, 1964, $35,000,000 for the fiscal year ending June 30, 1965, $40,000,000 each for the fiscal year ending June 30, 1966, and the succeeding fiscal year, $45,000,000 each for the fiscal year ending June 30, 1968, and the succeeding fiscal year, and $50,000,000 each for the fiscal year ending June 30, 1970, and succeeding fiscal years. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Administrator, State plans for such services. Aug. 14, 1935, c. 531, Title V, § 511, 49 Stat. 631; Aug. 10, 1939, c. 666, Title V, § 504, 53 Stat. 1380; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 401(b) (4), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 3, § 331(c), Pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub.L. 85–840, Title VI, § 603(a), 72 Stat. 1055; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(a) (2) (A), 74 Stat. 995; Oct. 24, 1963, Pub.L. 88–156, § 3(a), 77 Stat. 273.

Library references: Social Security and Public Welfare ⇐195; United States ⇐85; C.J.S. Social Security and Public Welfare § 65; C.J.S. United States § 123.

Historical Note

1963 Amendment. Pub.L. 88-156 increased the appropriation from $25,000,000 for each fiscal year beginning after June 30, 1960 to $30,000,000 for fiscal year ending June 30, 1964; $35,000,000 for fiscal year ending June 30, 1965; $40,000,000 each for fiscal years ending June 30, 1966 and 1967; $45,000,000 each for fiscal years ending June 30, 1968 and 1969, and $50,000,000 each for fiscal year ending June 30, 1970 and succeeding fiscal years.

1960 Amendment. Pub.L. 86–778 increased the appropriation from $20,000,000 to $25,000,000 for each fiscal year beginning after June 30, 1960.

1958 Amendment. Pub.L. 85–840 increased the appropriation from $15,000,000 to $20,000,000 for each fiscal year beginning after June 30, 1958.

1950 Amendment. Act Aug. 28, 1950, § 331(c), increased the appropriation from $7,500,000 to $12,000,000 for fiscal year 1951 and to $15,000,000, for fiscal years thereafter.

1946 Amendment. Act Aug. 10, 1946 increased the appropriation from $3,870,000 to $7,500,000, effective with respect to the fiscal year ending June 30, 1947, and subsequent fiscal years.

1939 Amendment. Act Aug. 10, 1939 increased appropriation from $2,850,000 to $3,870,000.

Effective Date of 1960 Amendment. Amendment of section by Pub.L. 86–778 effective only with respect to fiscal years beginning after June 30, 1960, see section 707(c) of Pub.L. 86–778, set out as a note under section 701 of this title.

Effective Date of 1950 Amendment. Section 331(f) of Act Aug. 28, 1950, provided that the amendment of this section shall be effective with respect to fiscal years beginning after June 30, 1950.

Effective Date of 1946 Amendment. Effective date and allotments for fiscal year 1947, see notes under section 701 of this title.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of

Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Children's Bureau", "Chief of Children's Bureau", and "Secretary of Labor" wherever appearing by Act Aug. 28, 1950, § 361(e).

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 701 of this title.

Additional Appropriation for Fiscal Year 1950; Allotment. Act Apr. 15, 1949, c. 57, 63 Stat. 47, authorized an additional sum of $1,500,000 for the fiscal year 1949 to provide necessary services and care for additional numbers of crippled children.

Section 2 of Act Apr. 15, 1949 provided for the manner of disbursement of the additional appropriation.

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 10, 1946, see 1946 U.S.Code Cong.Service, p. 1510. See, also, Act Apr. 15, 1949, 1949 U.S.Code Cong. Service, p. 1183; Act Aug. 28, 1950, 1950 U.S.Code Cong.Service, p. 3287; Pub.L. 85-840, 1958 U.S.Code Cong. and Adm. News, p. 4218; Pub.L. 86-778, 1960 U.S. Code Cong. and Adm.News, p. 3608; Pub. L. 88-156, 1963 U.S.Code Cong. and Adm. News, p. 1018.

§ 712. Allotments to States

(a) The Secretary shall allot one-half of the sum appropriated pursuant to section 711 of this title for each fiscal year as follows: He shall allot to each State $70,000 and shall allot the remainder of such one-half to the States according to the need of each State as determined by him after taking into consideration the number of crippled children in such State in need of the services referred to in section 711 of this title and the cost of furnishing such services to them.

(b) The Secretary shall also allot to the States (in addition to the allotments made pursuant to subsection (a) of this section) the remaining one-half of the sum appropriated for each fiscal year under section 711 of this title. Such one-half shall be allotted from time to time according to the financial need of each State for assistance in carrying out its State plan, as determined by the Administrator after taking into consideration the number of crippled children in each State in need of the services referred to in section 711 of this title and the cost of furnishing such services to them; except that not more than 25 per centum of such one-half shall be available for grants to State agencies (administering or supervising the administration of a State plan approved under section 713 of this title), and to public or other nonprofit institutions of higher learning (situated in any State), for special projects of regional or national significance which may contribute to the advancement of services for crippled children.

(c) The amount of any allotment to a State under subsection (a) of this section for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under section 714 of this title until the end of the second succeeding fiscal year. No payment to a State under section 714 of this

title shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available. Aug. 14, 1935, c. 531, Title V, § 512, 49 Stat. 631; Aug. 10, 1939, c. 666, Title V, § 505, 53 Stat. 1380; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 401(b) (5, 6), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 3, § 331(d), Pt. 6, § 361(e), 64 Stat. 552, 558; Aug. 28, 1958, Pub.L. 85–840, Title VI, § 603(b), (c), 72 Stat. 1055; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(a) (2) (B), (C), (b) (2) (A), 74 Stat. 996; Oct. 24, 1963, Pub.L. 88–156, § 3(b), (c), 77 Stat. 274.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1963 Amendment. Subsec. (a). Pub.L. 88–156, § 3(b), eliminated par. (1), which had provided out of the appropriation under section 711 of this title $6,000,000 for allotment among the States for fiscal year ending June 30, 1951, $60,000 outright to each State and the remainder according to the need of each State based upon the number of crippled children in the State and the cost of services furnished to them; and designated par. (2) as subsec. (a), substituted therein provision for allotment among the States of one-half of the sum appropriated for each fiscal year pursuant to section 711 of this title for former provision allotting among the States out of the appropriation under such section 711 the sum of $12,500,000 for each fiscal year beginning after June 30, 1960 and omitted following the $70,000 outright allotment to each State "(even though the amount appropriated for such year is less than $25,000,000)."

Subsec. (b). Pub.L. 88–156, § 3(c), substituted the provision of the first sentence for allotment to the States of one-half of the sum appropriated for each fiscal year pursuant to section 711 of this title for former provision allotting to the States out of the appropriation under such section 711 the sum of $12,500,000 for each fiscal year beginning after June 30, 1960 and substituted in the second sentence "Such one-half" and "such one-half" for "Such sums" and "such sum", respectively.

1960 Amendment. Subsec. (a) (2). Pub. L. 86–778, § 707(a) (2) (B), increased the total allotment to the States from $10,000,000 to $12,500,000 for each fiscal year beginning after June 30, 1960, and required the Secretary to allot $70,000 each fiscal year to each State even though the amount appropriated for such year is less than $25,000,000.

Subsec. (b). Pub.L. 86–778, § 707(a) (2) (C), (b) (2) (A), increased the total allotment to the States from $10,000,000 to $12,500,000 for each fiscal year beginning after June 30, 1960, inserted words "from time to time" after "shall be allotted", and limited to not more than 25 per centum of such sums the amount available for grants to State health agencies and to public or other nonprofit institutions of higher learning for special projects of regional or national significance which may contribute to the advancement of maternal and child health.

1958 Amendment. Subsec. (a) (2). Pub. L. 85–840, § 603(b), increased the total allotment to the States from $7,500,000 to $10,000,000 for each fiscal year beginning after June 30, 1958, and required the Secretary to allot $60,000 each fiscal year to each State even though the amount appropriated for the fiscal year is less than $20,000,000.

Subsec. (b). Pub.L. 85–840, § 603(c), increased the total allotment to the States from $7,500,000 to $10,000,000 for each fiscal year beginning after June 30, 1958.

1950 Amendment. Subsec. (a). Act Aug. 28, 1950, § 331(d), increased the total allotment to the States from $3,750,000 to $6,000,000 and the basic allotment to each State from $30,000 to $60,000, for the fiscal year 1951, and increased the total allotment to the States to $7,500,000 with the same basic $60,000 State allotment for fiscal years thereafter.

Subsec. (b). Act Aug. 28, 1950, § 331(d) increased the total allotment to the States from $3,750,000 to $6,000,000 for fiscal year 1951 and to $7,500,000 for fiscal years thereafter.

1946 Amendment. Subsection (a). Act Aug. 10, 1946, § 401(b) (5), increased

the amounts of allotments to $3,750,000, with each State getting $30,000 and a proportionate part of the remainder of the $3,750,000.

Subsec. (b). Act Aug. 10, 1946, § 401(b)(6), increased the allotment from $1,000,000 to $3,750,000.

1939 Amendment. Subsec. (a). Act Aug. 10, 1939, amended subsec. (a).

Subsec. (b). Act Aug. 10, 1939 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Act Aug. 10, 1939 redesignated former subsec. (b) as (c).

Effective Date of 1960 Amendment. Amendment of subsecs. (a) (2) and (b) of this section by Pub.L. 86-778 effective only with respect to fiscal years beginning after June 30, 1960, see section 707(c) of Pub.L. 86-778, set out as a note under section 701 of this title.

Effective Date of 1950 Amendment. Section 331(f) of Act Aug. 28, 1950 provided that the amendment of this section shall be effective with respect to fiscal years beginning after June 30, 1950.

Effective Date of 1946 Amendment. Effective date and allotments for fiscal year 1947, see notes under section 701 of this title.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Children's Bureau", "Chief of Children's Bureau", and "Secretary of Labor" wherever appearing by Act Aug. 28, 1950, § 361(e).

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 701 of this title.

Definition of "Secretary". "Secretary" as used in amendments to this chapter made by Pub.L. 85-840 means the Secretary of Health, Education, and Welfare, see section 702 of Pub.L. 85-840, set out as a note under section 402 of this title.

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287. See, also, Pub.L. 85-840, 1958 U.S.Code Cong. and Adm.News, p. 4218; Pub.L. 86-778, 1960 U.S.Code Cong. and Adm. News, p. 3608; Pub.L. 88-156, 1963 U.S. Code Cong. and Adm.News, p. 1018.

Cross References

Certification of available allotments, see section 714(c) of this title.

§ 713. State plans; contents; approval by Administrator

(a) A State plan for services for crippled children must (1) provide for financial participation by the State; (2) provide for the administration of the plan by a State agency or the supervision of the administration of the plan by a State agency; (3) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Administrator shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are necessary for the proper and efficient operation of the plan; (4) provide that the State agency will make such reports, in such form and containing such information, as the Administrator may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports; (5) provide for carrying out the

purposes specified in section 711 of this title; and (6) provide for cooperation with medical, health, nursing, and welfare groups and organizations and with any agency in such State charged with administering State laws providing for vocational rehabilitation of physically handicapped children.

(b) The Administrator shall approve any plan which fulfills the conditions specified in subsection (a) of this section and shall thereupon notify the State agency of his approval. Aug. 14, 1935, c. 531, Title V, § 513, 49 Stat. 632; Aug. 10, 1939, c. 666, Title V, § 506, 53 Stat. 1381; 1946 Reorg.Plan No. 2, §§ 1, 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), 64 Stat. 558.

Library references: Social Security and Public Welfare ⇐195; C.J.S. Social Security and Public Welfare § 65.

Historical Note

Codification. Provision of subsec. (b) of this section providing that the Chief of the Children's Bureau should notify the Secretary of Labor of the approval of a plan was omitted under the authority of 1946 Reorg.Plan No. 2, § 1.

1939 Amendment. Subsec. (a) (3). Act Aug. 10, 1939 provided methods relating to establishment and maintenance of personnel standards on a merit basis.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board" and "Chief of Children's Bureau" by Act Aug. 28, 1950.

Identical changes were effected by 1946 Reorg.Plan No. 2, §§ 1, 4. See notes to sections 701 and 902 of this title.

§ 714. Payment to States; computation of amounts

(a) From the sums appropriated therefor and the allotments available under section 712(a) of this title, the Secretary of the Treasury shall pay to each State which has an approved plan for services for crippled children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Administrator shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the

State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such investigation as he may find necessary.

(2) The Administrator shall then certify the amount so estimated by him to the Secretary of the Treasury, reduced or increased, as the case may be, by any sum by which the Administrator finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Administrator for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Administrator, the amount so certified.

(c) The Administrator shall from time to time certify to the Secretary of the Treasury the amounts to be paid to the States from the allotment available under section 712(b) of this title, and the Secretary of the Treasury shall, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, make payments of such amounts from such allotments at the time or times specified by the Administrator. Payments of grants for special projects under section 712(b) of this title may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants. Aug. 14, 1935, c. 531, Title V, § 514, 49 Stat. 632; Aug. 10, 1939, c. 666, Title V, § 507(a), (b), 53 Stat. 1381; 1940 Reorg.Plan No. III, § 1(a) (1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), 64 Stat. 558; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(b) (2) (B), 74 Stat. 996.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1960 Amendment. Subsec. (c). Pub.L. 86–778 permitted payments of grants for special projects under section 712(b) of this title to be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine, and required such payments to be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants.

1939 Amendment. Subsec. (a). Act Aug. 10, 1939, § 507(a), substituted "section 712 (a)" for "section 712".

Subsec. (c). Act Aug. 10, 1939, § 507 (b), added subsec. (c).

Effective Date of 1960 Amendment. Amendment of subsec. (c) of this section by Pub.L. 86–778 effective only with re-

spect to fiscal years beginning after June 30, 1960, see section 707(c) of Pub. L. 86-778, set out as a note under section 701 of this title.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Secretary of Labor" wherever appearing by Act Aug. 28, 1950.

Identical change was effected by 1946 Reorg.Plan No. 2. See note under section 701 of this title.

Division of Disbursement and certain other offices and agencies and their functions were consolidated into Fiscal Service of Treasury Department by 1940 Reorg.Plan No. III, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Legislative History: For legislative history and purpose of Pub.L. 86-778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

§ 715. Stopping payment on failure to comply with State plan

In the case of any State plan for services for crippled children which has been approved by the Administrator, if the Administrator, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds that in the administration of the plan there is a failure to comply substantially with any provision required by section 713 of this title to be included in the plan, he shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State. Aug. 14, 1935, c. 531, Title V, § 515, 49 Stat. 633; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361 (e), 64 Stat. 558.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Chief of Children's Bureau", and "Secretary of Labor" by Act Aug. 28, 1950.

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 701 of this title.

CHILD-WELFARE SERVICES

§ 721. Appropriations

For the purpose of enabling the United States, through the Secretary, to cooperate with State public-welfare agencies in establishing, extending, and strengthening child-welfare services, the following sums are authorized to be appropriated: $25,000,000 each for the fiscal year ending June 30, 1961, and the succeeding fiscal year, $30,000,000 for the fiscal year ending June 30, 1963, $35,000,000 for the fiscal year ending June 30, 1964, $40,000,000 each for the fiscal year ending June 30, 1965, and the succeeding fiscal year, $45,000,000 each for the fiscal year ending June 30, 1967, and the succeeding fiscal year, and $50,000,000 each for the fiscal year ending June 30, 1969, and succeeding fiscal years. Aug. 14, 1935, c. 531, Title V, § 521, 49 Stat. 633; Aug. 10, 1939, c. 666, Title V, § 507(c), 53 Stat. 1381; 1940 Reorg.Plan No. III, § 1(a) (1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 401(b) (7), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 3, § 331(e), Pt. 6, § 361 (e), 64 Stat. 552, 558; Aug. 1, 1956, c. 836, Title IV, § 402, 70 Stat. 856; Aug. 28, 1958, Pub.L. 85–840, Title VI, § 601, 72 Stat. 1052; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(a) (3) (A), 74 Stat. 996; July 25, 1962, Pub.L. 87–543, Title I, § 102(a), (d) (1), 76 Stat. 182, 184.

Historical Note

1962 Amendment. Pub.L. 87–543 increased the appropriation authorization by substituting provision for $25,000,000 each for fiscal years ending June 30, 1961 and June 30, 1962, $30,000,000 for fiscal year ending June 30, 1963, $35,000,000 for fiscal year ending June 30, 1964, $40,000,000 each for fiscal years ending June 30, 1965 and June 30, 1966, $45,000,000 each for fiscal years ending June 30, 1967 and June 30, 1968, and $50,000,000 each for fiscal year ending June 30, 1969 and succeeding fiscal years for former provision for $25,000,000 for each fiscal year, beginning with fiscal year ending June 30, 1961, and substituted "child-welfare services" for "public-welfare services (hereinafter in this subchapter referred to as 'child-welfare services') for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent".

1960 Amendment. Pub.L. 86–778 increased the annual appropriation from $17,000,000 to $25,000,000 beginning with the fiscal year ending June 30, 1961.

1958 Amendment. Pub.L. 85–840 increased the annual appropriation from $12,000,000 to $17,000,000 for each fiscal year beginning with the fiscal year ending June 30, 1959, and eliminated provisions with respect to the use of child-welfare funds in predominantly rural areas, which prescribed the manner of allotment, related to expenditure of amounts allotted, and which required certification of amounts to be paid to the State. See sections 722–725 of this title.

1956 Amendment. Subsec. (a). Act Aug. 1, 1956 increased the annual authorization of appropriations from $10,000,000 to $12,000,000 for each fiscal year, beginning with the fiscal year ending June 30, 1958.

1950 Amendment. Subsec. (a). Act Aug. 28, 1950, § 331(e), increased annual appropriation from $3,500,000 to $10,000,000, increased the basic allotment to each State from $20,000 to $40,000, provided that allotments shall be on the basis of rural population under the age of 18, and authorized expenditures for returning any runaway child under age 16 from one State to his own community in another State if such return is in the inter-

est of the child and the cost cannot be otherwise met.

1946 Amendment. Subsec. (a). Act Aug. 10, 1946 increased the appropriation from $1,510,000 to $3,500,000 and the allotment to each State from $10,000 to $20,000, effective with respect to the fiscal year ending June 30, 1947, and subsequent fiscal years.

1939 Amendment. Subsec. (a). Act Aug. 10, 1939 increased annual appropriation from $1,500,000 to $1,510,000.

Effective Date of 1962 Amendment. Amendment of this section by section 102 (d) (1) of Pub.L. 87-543 applicable in the case of expenditures, under a State plan approved under subchapter I, IX, X, or XIV of this chapter or developed as provided in sections 721-728 of this title, as the case may be, made after June 30, 1962, see section 202(c) of Pub.L. 87-543, set out as a note under section 606 of this title.

Effective Date of 1960 Amendment. Amendment of section by Pub.L. 86-778 effective only with respect to fiscal years beginning after June 30, 1960, see section 707(c) of Pub.L. 86-778, set out as a note under section 701 of this title.

Effective Date of 1956 Amendment. Section 403 of Act Aug. 1, 1956, provides that: "The amendment made by section 402 [to subsec. (a) of this section] shall be effective with respect to fiscal years beginning after June 30, 1957."

Effective Date of 1950 Amendment. Section 331(f) of Act Aug. 28, 1950 provided that the amendment of this section shall be effective with respect to fiscal years beginning after June 30, 1950.

Effective Date of 1946 Amendment. Effective date and allotments for fiscal year 1947, see notes under section 701 of this title.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Children's Bureau", "Chief of Children's Bureau", and "Secretary of Labor" wherever appearing by Act Aug. 28, 1950, § 361(e).

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 701 of this title.

Division of Disbursement and certain other offices and agencies and their functions were consolidated into Fiscal Service of Treasury Department by Reorg. Plan No. III, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Advisory Council on Child-Welfare Services. Section 705 of Pub.L. 85-840 established an Advisory Council on Child-Welfare Services for the purpose of making recommendations and advising the Secretary of Health, Education, and Welfare in connection with the effectuation of the provisions of sections 721-725 of this title; required the Secretary to appoint the Council of twelve persons before January 1959, without regard to the civil-service laws; required the Secretary to make available to the Council such assistance and such pertinent data prepared by the Department of Health, Education, and Welfare as it may require to carry out its functions; provided for the compensation, traveling expenses and per diem in lieu of subsistence of members of the Council; and required the Council to make a report of its findings and recommendations (including recommendations for changes in the provisions of sections 721-725 of this title) to the Secretary and to the Congress on or before Jan. 1, 1960, after which date such Council ceased to exist.

Definition of "Secretary". "Secretary" as used in amendments to this chapter made by Pub.L. 85-840 means the Secretary of Health, Education, and Welfare, see section 702 of Pub.L. 85-840, set out as a note under section 402 of this title.

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 10, 1946, see 1946 U.S.Code Cong.Service, p. 1510. See, also, Act Aug. 28, 1950, 1950 U.S.Code Cong. Service, p. 3287; Pub.L. 85-840, 1958 U.S.Code Cong. and Adm.News, p. 4218; Pub.L. 86-778, 1960 U.S.Code Cong. and Adm.News, p. 3608; Pub.L. 87-543, 1962 U.S.Code Cong. and Adm.News, p. 1943.

Notes of Decisions

Library references

Infants ⇐13 et seq.
United States ⇐85.
C.J.S. Infants § 11 et seq.
C.J.S. United States § 123.

1. Mandamus

Where State Auditor refused to perform clear legal duty to honor requisition drawn by State Director of Department of Public Assistance against funds paid into State Treasury by Federal Government for payment to employee of Department of Public Assistance to enable employee to obtain technical and specialized training in child welfare services, peremptory writ of mandamus would be awarded to compel State Auditor to perform such duty. State ex rel. Roth v. Sims, 1954, 81 S.E.2d 670, 139 W.Va. 795.

§ 722. Allotments to States

(a) All but $10,000,000 of the total appropriated for a fiscal year under section 721 of this title, or, if such total is less than $35,000,000, all but the excess (if any) of such total over $25,000,000, shall be allotted by the Secretary for use by cooperating State public-welfare agencies which have plans developed jointly by the State agency and the Secretary, as follows: He shall allot to each State $70,000 or, if the amount appropriated under section 721 of this title for such year is less than $25,000,000, he shall allot to each State $50,000 or, if greater, such portion of $70,000 as the amount appropriated under such section bears to $25,000,000; and he shall allot to each State an amount which bears the same ratio to the remainder of the sum available for allotment under this subsection for such year as the product of (1) the population of such State under the age of 21 and (2) the allotment percentage of such State (as determined under section 724 of this title) bears to the sum of the corresponding products of all the States.

(b) (1) If the amount allotted to a State under subsection (a) of this section for any fiscal year is less than such State's base allotment, it shall be increased to such base allotment, the total of the increases thereby required being derived by proportionately reducing the amount allotted under subsection (a) of this section to each of the remaining States, but with such adjustments as may be necessary to prevent the allotment of any such remaining State under subsection (a) of this section from being thereby reduced to less than its base allotment.

(2) For purposes of paragraph (1) of this subsection the base allotment of any State for any fiscal year means the amount which would be allotted to such State for such year under the provisions of section 721 of this title, as in effect prior to August 28, 1958, as applied to an appropriation of $12,000,000. Aug. 14, 1935, c. 531, Title V, § 522, as added Aug. 28, 1958, Pub.L. 85–840, Title VI, § 601, 72 Stat. 1053, and amended Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(a) (3) (B), 74 Stat. 996; July 25, 1962, Pub.L. 87–543, Title I, § 102(c) (1), 76 Stat. 183.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1962 Amendment. Subsec. (a). Pub.L. 87–543 substituted "All but $10,000,000 of the total appropriated for a fiscal year under section 721 of this title, or, if such total is less than $35,000,000, all but the excess (if any) of such total over $25,000,000," "He shall allot to each State $70,000 or, if the amount appropriated under section 721 of this title for such year is less than $25,000,000, he shall allot to each State $50,000 or, if greater, such portion of $70,000 as the amount appropriated under such section bears to $25,000,000" and "the remainder of the sum available for allotment under this subsection for such year" for "The sums appropriated for each fiscal year under section 721 of this title", "He shall allot to each State $50,000 or, if greater, such portion of $70,000 as the amount appropriated under section 721 of this title for such year bears to the amount authorized to be so appropriated" and "the remainder of the sums so appropriated for such year", respectively.

1960 Amendment. Subsec. (a). Pub.L. 86–778 substituted "shall allot to each State $50,000 or, if greater, such portion of $70,000" for "shall allot to each State such portion of $60,000."

Effective Date of 1962 Amendment. Section 202(b) of Pub.L. 87–543 provided that: "The amendments made by sections 102(c), 123, and 132(d) [enacting sections 727 and 906(f) and amending sections 722(a), 726(a) and 906(a), (b) of this title, and repealing credits to section 1308 of this title and provisions set out as notes under such section 1308] shall be applicable in the case of fiscal years beginning after June 30, 1962."

Effective Date of 1960 Amendment. Amendment of subsec. (a) of this section by Pub.L. 86–778 effective only with respect to fiscal years beginning after June 30, 1960, see section 707(c) of Pub.L. 86–778, set out as a note under section 701 of this title.

Definition of "Secretary". "Secretary" as used in amendments to this chapter made by Pub.L. 85–840 means the Secretary of Health, Education and Welfare, see section 702 of Pub.L. 85–840, set out as a note under section 402 of this title.

Legislative History: For legislative history and purpose of Pub.L. 85–840, see 1958 U.S.Code Cong. and Adm.News, p. 4218. See, also, Pub.L. 86–778, 1960 U.S.Code Cong. and Adm.News, p. 3608; Pub.L. 87–543, 1962 U.S.Code Cong. and Adm.News, p. 1943.

§ 723. Payment to States; computation of amounts

(a) From the sums appropriated therefor and the allotment available under sections 721–728 of this title, the Secretary shall from time to time pay to each State—

(1) that has a plan for child-welfare services which has been developed as provided in sections 721–728 of this title and which—

(A) provides for coordination between the services provided under such plan and the services provided for dependent children under the State plan approved under subchapter IV of this chapter, with a view to provision of welfare and related services which will best promote the welfare of such childen and their families, and

(B) provides, with respect to day care services (including the provision of such care) provided under the plan—

(i) for cooperative arrangements with the State health authority and the State agency primarily responsible for State supervision of public schools to assure maximum utilization of such agencies in the

provision of necessary health services and education for children receiving day care,

(ii) for an advisory committee, to advise the State public welfare agency on the general policy involved in the provision of day care services under the State plan, which shall include among its members representatives of other State agencies concerned with day care or services related thereto and persons representative of professional or civic or other public or nonprofit private agencies, organizations, or groups concerned with the provision of day care,

(iii) for such safeguards as may be necessary to assure provision of day care under the plan only in cases in which it is in the best interest of the child and the mother and only in cases in which it is determined, under criteria established by the State, that a need for such care exists; and, in cases in which the family is able to pay part or all of the costs of such care, for payment of such fees as may be reasonable in the light of such ability, and

(iv) for giving priority, in determining the existence of need for such day care, to members of low-income or other groups in the population and to geographical areas which have the greatest relative need for extension of such day care, and

(2) that makes a satisfactory showing that the State is extending the provision of child-welfare services in the State, with priority being given to communities with the greatest need for such services after giving consideration to their relative financial need, and with a view to making available by July 1, 1975, in all political subdivisions of the State, for all children in need thereof, child-welfare services provided by the staff (which shall to the extent feasible be composed of trained child-welfare personnel) of the State public welfare agency or of the local agency participating in the administration of the plan in the political subdivision,

an amount equal to the Federal share (as determined under section 724 of this title) of the total sum expended under such plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child-welfare services, in developing State services for the encouragement and assistance of adequate methods of community child-welfare organization, in paying the costs of returning any runaway child who has not attained the age of eighteen to his own community in another State, and of maintaining such child until such return (for a period not exceeding fifteen days), in cases in which such costs cannot be met by the parents

of such child or by any person, agency, or institution legally responsible for the support of such child: *Provided,* That in developing such services for children the facilities and experience of voluntary agencies shall be utilized in accordance with child-care programs and arrangements in the States and local communities as may be authorized by the State.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of subsection (a) of this section.

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid thereunder to the State for such prior period. Aug. 14, 1935, c. 531, Title V, § 523, as added Aug. 28, 1958, Pub.L. 85–840, Title VI, § 601, 72 Stat. 1053, and amended July 25, 1962, Pub.L. 87–543, Title I, § 102(b), 76 Stat. 182.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1962 Amendment. Subsec. (a). Pub.L. 87–543 incorporated existing provisions in par. (1) and added subpars. (A), (B) and par. (2), and inserted "State," in "costs of State, district, county, or other local child-welfare services".

Effective Date of 1962 Amendment. Amendment of subsec. (a) of this section by section 102(b) (1) of Pub.L. 87–543 effective July 1, 1963, see section 202(a) of Pub.L. 87–543, set out as a note under section 302 of this title.

Amendment of subsec. (a) of this section by section 102(b) (2) of Pub.L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IX, X, or XIV of this chapter or developed as provided in sections 721–728 of this title, as the case may be, made after June 30, 1962, see section 202(c) of Pub.L. 87–543, set out as a note under section 606 of this title.

Definition of "Secretary". "Secretary" as used in amendments to this chapter made by Pub.L. 85–840 means the Secretary of Health, Education, and Welfare, see section 702 of Pub.L. 85–840, set out as a note under section 402 of this title.

Legislative History: For legislative history and purpose of Pub.L. 85–840, see 1958 U.S.Code Cong. and Adm.News, p. 4218. See, also, Pub.L. 87–543, 1962 U.S. Code Cong. and Adm.News, p. 1943.

§ 724. Allotment percentage and Federal share

(a) The "allotment percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States; except that (A) the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and (B) the allotment percentage shall be 70 per centum in the case of Puerto Rico, the Virgin Islands, and Guam.

(b) For the fiscal year ending June 30, 1960, and each year thereafter, the "Federal share" for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (1) in no case shall the Federal share be less than 33⅓ per centum or more than 66⅔ per centum, and (2) the Federal share shall be 66⅔ per centum in the case of Puerto Rico, the Virgin Islands, and Guam. For the fiscal year ending June 30, 1959, the Federal share shall be determined pursuant to the provisions of section 721 of this title as in effect prior to August 28, 1958.

(c) The Federal share and the allotment percentage for each State shall be promulgated by the Secretary between July 1 and August 31 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such promulgation: *Provided*, That the Secretary shall promulgate such Federal shares and allotment percentages as soon as possible after August 28, 1958, which promulgation shall be conclusive for each of the 3 fiscal years in the period ending June 30, 1961.

(d) For purposes of this section, the term "United States" means the fifty States and the District of Columbia.

(e) Promulgations made before satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska shall prescribe a Federal share for Alaska of 50 per centum and, for purposes of such promulgations, Alaska shall not be included as part of the "United States". Promulgations made thereafter but before per capita income data for Alaska for a full three-year period are available from the Department of Commerce shall be based on satisfactory data available therefrom for Alaska for such one full year or, when such data are available for a two-year period, for such two years. Aug. 14, 1935, c. 531, Title V, § 524, as added Aug. 28, 1958, Pub.L. 85–840, Title VI, § 601, 72 Stat. 1054, and amended June 25, 1959, Pub.L. 86–70, § 32(b), 73 Stat. 149; July 12, 1960, Pub.L. 86–624, § 30(b), 74 Stat. 420.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1960 Amendment. Subsecs. (a)–(c). Pub.L. 86–624, § 30(b) (1), substituted "United States" for "continental United States (including Alaska)" in subsecs. (a), (b) and (c).

Subsecs. (d), (e). Pub.L. 86–624, § 30(b) (2), added subsecs. (d) and (e).

1959 Amendment. Subsec. (a). Pub.L. 86–70, § 32(b) (1), (3), substituted "(including Alaska)" "(excluding Alaska)", and eliminated provisions which established the allotment percentage at 50 per centum in the case of Alaska.

Subsec. (b). Pub.L. 86–70, § 32(b) (2), (3), substituted "(including Alaska)" for "(excluding Alaska)", and eliminated provisions which established the Federal share at 50 per centum in the case of Alaska.

Subsec. (c). Pub.L. 86–70, § 32(b) (3), substituted "(including Alaska)" for "(excluding Alaska)."

Effective Date of 1960 Amendment. Amendment of section by Pub.L. 86–624 applicable in the case of promulgations or computations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after Aug. 21, 1959, see section 47(a) of Pub.L. 86–624, set out as a note under section 442 of Title 20, Education.

Effective Date of 1959 Amendment. Amendment of section by Pub.L. 86–70 applicable in the case of promulgations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska, see section 47(a) of Pub.L. 86–70, set out as a note under section 442 of Title 20, Education.

Definition of "Secretary". "Secretary" as used in amendments to this chapter made by Pub.L. 85–840 means the Secretary of Health, Education, and Welfare, see section 702 of Pub.L. 85–840, set out as a note under section 402 of this title.

Legislative History: For legislative history and purpose of Pub.L. 85–840, see 1958 U.S.Code Cong. and Adm.News, p. 4218. See, also, Pub.L. 86–70, 1959 U.S. Code Cong. and Adm.News, p. 1675; Pub. L. 86–624, 1960 U.S.Code Cong. and Adm. News, p. 2963.

§ 725. Reallotment of allotments to States

The amount of any allotment to a State under section 722 of this title for any fiscal year which the State certifies to the Secretary will not be required for carrying out the State plan developed as provided in such section shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out their State plans so developed for sums in excess of those previously allotted to them under that section and (2) will be able to use such excess amounts during such fiscal year. Such reallotments shall be made on the basis of the State plans so developed, after taking into consideration the population under the age of twenty-one, and the per capita income of each such State as compared with the population under the age of twenty-one, and the per capita income of all such States with respect to which such a determination by the Secretary has been made. Any amount so reallotted to a State shall be deemed part of its allotment under section 722 of this title. Aug. 14, 1935, c. 531, Title V, § 525, as added Aug. 28, 1958, Pub.L. 85–840, Title VI, § 601, 72 Stat. 1054.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

Definition of "Secretary". "Secretary" as used in amendments to this chapter made by Pub.L. 85–840 means the Secretary of Health, Education, and Welfare, see section 702 of Pub.L. 85–840, set out as a note under section 402 of this title.

Legislative History: For legislative history and purpose of Pub.L. 85–840, see 1958 U.S.Code Cong. and Adm.News, p. 4218.

§ 726. Research, training, or demonstration projects

(a) There are authorized to be appropriated for each fiscal year such sums as the Congress may determine for grants by the Secretary to public or other nonprofit institutions of higher learning, and to

public or other nonprofit agencies and organizations engaged in research or child welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare; and for grants by the Secretary to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships with such stipends and allowances as may be permitted by the Secretary.

(b) Payments of grants for special projects under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants. Aug. 14, 1935, c. 531, Title V, § 526, as added Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(b) (3), 74 Stat. 997, and amended July 25, 1962, Pub.L. 87–543, Title I, § 123(d), 76 Stat. 193.

Library references: Infants ⚖13 et seq.; C.J.S. Infants § 11 et seq.

Historical Note

1962 Amendment. Pub.L. 87–543, § 123 (d) (2), inserted "training" in the catchline.

Subsec. (a). Pub.L. 87–543, § 123(d) (1), authorized grants or projects for training personnel.

Effective Date of 1962 Amendment. Amendment of subsec. (a) of this section by section 102(c) (1) of Pub.L. 87–543 applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub.L. 87–543, set out as a note under section 722 of this title.

Effective Date. Section effective only with respect to fiscal years beginning after June 30, 1960, see section 707(c) of Pub.L. 86–778, set out as a note under section 701 of this title.

Legislative History: For legislative history and purpose of Pub.L. 86–778, see 1960 U.S.Code Cong. and Adm.News, p. 3608. See, also, Pub.L. 87–543, 1962 U.S. Code Cong. and Adm.News, p. 1943.

§ 727. Day care services—Allotments to States

(a) In order to assist the States to provide adequately for the care and protection of children whose parents are, for part of the day, working or seeking work, or otherwise absent from the home or unable for other reasons to provide parental supervision, the portion of the appropriation under section 721 of this title for any fiscal year which is not allotted under section 722 of this title shall be allotted by the Secretary among the States solely for use, under the State plan developed as provided in sections 721–728 of this title, for day care services, including the provision of day care in facilities (including private homes) which are licensed by the State, or are approved (as meeting the standards established for such licensing) by the State agency responsible for licensing facilities of this type, as follows: He shall allot to each State an amount which bears the same ratio to such portion of the appropriation as the product of (1) the popu-

lation of the State under the age of 21 and (2) the allotment percentage of such State (as determined under section 724 of this title) bears to the sum of the corresponding products of all the States, except that the allotment of any State as so computed which is less than $10,000 shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotments to each of the remaining States (as so computed) having an allotment in excess of that amount, but with such adjustments as may be necessary to prevent the allotment of any of such remaining States from being thereby reduced to less than that amount.

Reallotment of allotments to States

(b) The amount of any allotment to a State under subsection (a) of this section for any fiscal year which the State certifies to the Secretary will not be required for the purposes for which allotted shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out such purposes for sums in excess of those previously allotted to them under subsection (a) of this section, and (2) will be able to use such excess amounts during such fiscal year. Such reallotments shall be made on the basis of the need for additional funds in carrying out such purposes, after taking into consideration the population under the age of twenty-one, and the per capita income of each such State as compared with the population under the age of twenty-one, and the per capita income of all such States with respect to which such a determination by the Secretary has been made. Any amount so reallotted to a State shall be deemed part of its allotment under subsection (a) of this section. Aug. 14, 1935, c. 531, Title V, § 527, as added July 25, 1962, Pub.L. 87–543, Title I, § 102(c) (2), 76 Stat. 183.

Library references: Infants ⇐13; United States ⇐82; C.J.S. Infants § 11 et seq; C.J.S. United States § 122.

Historical Note

Effective Date. Section applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as a note under section 722 of this title.

Legislative History: For legislative history and purpose of Pub.L. 87–543, see 1962 U.S.Code Cong. and Adm.News, p. 1943.

§ 728. "Child-welfare services" defined

For purposes of sections 721–728 of this title, the term "child-welfare services" means public social services which supplement, or substitute for, parental care and supervision for the purpose of (1) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of children of working mothers, and (4) otherwise protecting and promoting the

welfare of children, including the strengthening of their own homes where possible or, where needed, the provision of adequate care of children away from their homes in foster family homes or day-care or other child-care facilities. Aug. 14, 1935, c. 531, Title V, § 528, as added July 25, 1962, Pub.L. 87-543, Title I, § 102(d) (2), 76 Stat. 184.

Library references: Infants ⇐13 et seq.; C.J.S. Infants § 11 et seq.

Historical Note

Effective Date. Section applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter or developed as provided in sections 721-728 of this title, as the case may be, made after June 30, 1962, see section 202(c) of Pub.L. 87-543, set out as a note under section 606 of this title.

Legislative History: For legislative history and purpose of Pub.L. 87-543, see 1962 U.S.Code Cong. and Adm.News, p. 1943.

MATERNITY AND INFANT CARE PROJECTS AND RESEARCH PROJECTS

§ 729. Maternity and infant care projects—Appropriations

(a) In order to help reduce the incidence of mental retardation caused by complications associated with childbearing, there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1964, $15,000,000 for the fiscal year ending June 30, 1965, and $30,000,000 for each of the next three fiscal years, for grants to assist in meeting the cost of projects as provided in this section.

State health agencies; limitation on payments; scope of projects; health hazards; low-income families; other reasons for lack of health care

(b) From the sums appropriated pursuant to subsection (a) of this section, the Secretary is authorized to make grants to the State health agency of any State and, with the consent of such agency in the case of a project in which such agency is unable or unwilling to participate, to the health agency of any political subdivision of the State, to pay not to exceed 75 per centum of the cost (exclusive of general agency overhead) of any project for the provision of necessary health care to prospective mothers (including, after childbirth, health care to mothers and their infants) who have or are likely to have conditions associated with childbearing which increase the hazards to the health of the mothers or their infants (including those which may cause physical or mental defects in the infants) and whom the State or local health agency determines will not receive necessary health care because they are from low-income families or for other reasons beyond their control.

Payments to States; adjustments; advances or reimbursement; installments; conditions

(c) Payment of grants under this section may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may de-

termine. Aug. 14, 1935, c. 531, Title V, § 531, as added Oct. 24, 1963, Pub.L. 88–156, § 4, 77 Stat. 274.

Library references: Social Security and Public Welfare ⇐191; United States ⇐85; C.J.S. Social Security and Public Welfare § 56; C.J.S. United States § 123.

Historical Note

Codification. A prior section 531 of Act Aug. 14, 1935, which appropriated funds for vocational rehabilitation, was classified to section 45b of Title 29, Labor, and was omitted from the Code as superseded by section 31 of Title 29.

Legislative History: For legislative history and purpose of Pub.L. 88–156, see 1963 U.S.Code Cong. and Adm.News, p. 1018.

§ 729a. Research projects relating to maternal and child health services and crippled children's services—Appropriations

(a) There are authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1964, such sums, not exceeding $8,000,000 for any fiscal year, as the Congress may determine to enable the Secretary to make grants to or jointly financed cooperative arrangements with public or other nonprofit institutions of higher learning, and public or other nonprofit agencies and organizations engaged in research or in maternal and child health or crippled children's programs, and contracts with public or nonprofit private agencies and organizations engaged in research or in such programs, for research projects relating to maternal and child health services or crippled children's services which show promise of substantial contribution to the advancement thereof.

Payments to eligible institutions, agencies and organizations; adjustments; advances or reimbursement; installments; conditions

(b) Payments of grants or under contracts or cooperative arrangements under this section may be made (after necessary adjustment, in the case of grants, on account of previously made underpayments or overpayments) in advance or by way of reimbursements, and in such installments and on such conditions, as the Secretary may determine. Aug. 14, 1935, c. 531, Title V, § 532, as added Oct. 24, 1963, Pub.L. 88–156, § 4, 77 Stat. 274.

Library references: Social Security and Public Welfare ⇐195; C.J.S. Social Security and Public Welfare § 65.

Historical Note

Legislative History: For legislative history and purpose of Pub.L. 88–156, see 1963 U.S.Code Cong. and Adm.News, p. 1018.

ADMINISTRATION

§ 731. Appropriation for administration

(a) Executed.

(b) The Administrator shall make such studies and investigations as will promote the efficient administration of sections 701–703, 704, 705, 711–715, 721–729a, and 731 of this title.

(c) Repealed. Aug. 28, 1950, c. 809, Title IV, § 402(a), 64 Stat. 558.

Aug. 14, 1935, c. 531, Title V, § 541, 49 Stat. 634; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 401(b) (8), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), Title IV, § 402(a), 64 Stat. 558.

Library references: Social Security and Public Welfare ⇐5; C.J.S. Social Security and Public Welfare § 9.

Historical Note

Codification. Subsec. (a) authorized an appropriation of $1,000,000 for the Federal Security Agency for the fiscal year ending June 30, 1947, and has been omitted as executed.

1946 Amendment. Subsec. (a). Act Aug. 10, 1946 provided for an appropriation for the fiscal year ending June 30, 1947.

Effective Date of 1946 Amendment. Effective date and allotments for fiscal year 1947, see notes under section 701 of this title.

Repeals. Subsec. (c) related to full account of the administration of this subchapter in annual report to Congress, and was repealed by Act Aug. 28, 1950, § 402(a).

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Children's Bureau", "Chief of Children's Bureau", and "Secretary of Labor" wherever appearing by Act Aug. 28, 1950, § 361(e).

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 701 of this title.

Congressional Comment: For legislative history and purpose of Act Aug. 10, 1946, see 1946 U.S.Code Cong.Service, p. 1510.

SUBCHAPTER VI.—PUBLIC HEALTH WORK

§§ 801–803. Repealed. July 1, 1944, c. 373, Title IX, § 913, 58 Stat. 714

Historical Note

Section 801, Acts Aug. 14, 1935, c. 531, Title VI, § 601, 49 Stat. 634; Aug. 10, 1939, c. 666, Title V, § 509, 53 Stat. 1381, which provided appropriations for the purpose of assisting States and subdivisions in maintaining adequate public health services, is covered by section 246 of this title.

Section 802, Act Aug. 14, 1935, c. 531, Title VI, § 602, 49 Stat. 634, which provided for allotments to States by Surgeon General, is covered by section 246 of this title.

Section 803, Act Aug. 14, 1935, c. 531, Title VI, § 603, 49 Stat. 635, which provided appropriations for investigation of diseases by Service, is covered by section 246 of this title.

Renumbering of Repealing Act. Section 611 of Act July 1, 1944, which repealed these sections, was renumbered 711 by Act Aug. 13, 1946, c. 958, § 5, 60 Stat. 1049, 713 by Act Feb. 28, 1948, c. 83, § 9(b), 62 Stat. 47, 813 by Act July 30, 1956, c. 779, § 3(b), 70 Stat. 720, and 913 by Pub.L. 88-581, § 4(b), Sept. 4, 1964, 78 Stat. 919.

SUBCHAPTER VII.—ADMINISTRATION

Historical Note

1950 Amendment. Act Aug. 28, 1950, c. 809, Title III, Part 6, § 361(f), 64 Stat. 558, amended subchapter heading which formerly read "Social Security Board" to read as now set out.

§ 901. Commissioner for Social Security; appointment; duties

Historical Note

Codification. Section Act Aug. 14, 1935, c. 531, Title VII, § 701, 49 Stat. 635; 1939 Reorg.Plan No. 1, §§ 201–203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title IV, § 401(a), 64 Stat. 558, which provided for a Commissioner for Social Security in the Federal Security Agency, was omitted because of the abolition of that office by section 8 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. Section 4 of 1953 Reorg.Plan No. 1 established the office of Commissioner of Social Security in the Department of Health, Education, and Welfare.

§ 901a. Repealed. Aug. 28, 1950, c. 809, Title IV, § 401(b), 64 Stat. 558

Historical Note

Section, Act Aug. 10, 1939, c. 666, Title IX, § 908, 53 Stat. 1402, placed the Social Security Board under the direction and supervision of the Federal Security Administrator.

§ 902. Duties of Secretary of Health, Education, and Welfare and the Secretary of Labor

The Secretary of Health, Education, and Welfare and the Secretary of Labor, respectively, shall perform the duties imposed upon them by this chapter. The Secretary of Health, Education, and Welfare shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters on administrative policy concerning old-age pensions and related subjects. The Secretary of Labor shall also have the duty of studying and making recom-

mendations as to legislation and matters of administrative policy concerning unemployment compensation, accident compensation and related subjects. Aug. 14, 1935, c. 531, Title VII, § 702, 49 Stat. 636; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg.Plan No. II, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; 1950 Reorg.Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; Aug. 28, 1950, c. 809, Title III, pt. 6, § 361(c), (d), 64 Stat. 558; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.

Library references: Social Security and Public Welfare ⇐5; C.J.S. Social Security and Public Welfare § 9.

Historical Note

Codification. Provisions relating to the Secretary of Labor were inserted in view of 1950 Reorg.Plan No. 19, which transferred the Bureau of Employees' Compensation from the Federal Security Agency to the Department of Labor and the functions of the Federal Security Administrator with respect to the Bureau and to employees' compensation, including workmen's compensation, to the Secretary of Labor. See transfer of functions notes below.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board", and "he", "him", or "his" for "it" or "its" wherever appearing by Act Aug. 28, 1950.

The Bureau of Employees' Compensation of the Federal Security Agency, together with its functions, was transferred to the Department of Labor to be administered under the direction and supervision of the Secretary of Labor by section 1 of 1950 Reorg.Plan No. 19, set out as a note under section 133z-15 of Title 5, Executive Departments and Government Officers and Employees.

The Bureau of Employment Security of the Federal Security Agency, together with its functions, was transferred to the Department of Labor, to be administered by the Secretary of Labor, by section 1 of 1949 Reorg.Plan No. II, set out as a note under section 133z-15 of Title 5.

"Administrator" was substituted for "Board" by 1946 Reorg.Plan No. 2, set out in note under section 133y-16 of Title 5, Executive Departments and Government Officers and Employees, which abolished the Social Security Board and transferred its functions and those of its chairman to the Federal Security Administrator to be performed by him or under his direction and control by such officers and employees of the Federal Security Agency as he designates. For transfer of personnel, property, records, and funds, see section 12 of 1946 Reorg. Plan No. 2.

Social Security Board and its functions were consolidated with other agencies under Federal Security Agency by 1939 Reorg.Plan No. I, §§ 201-203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See sections 208-211 of that plan for provisions relating to transfer of records, property, funds, and personnel.

Social Security Administration; Commissioner for Social Security. Federal Security Agency Order 57, July 16, 1946, 11 F.R. 7943, provided as follows:

"1. The Commissioner for Social Security shall have and perform, under the general supervision and direction of the Administrator, all duties, powers and functions transferred by Reorganization Plan No. 2 of 1946 [set out as a note under section 133y—16 of Title 5] to the Administrator from the Social Security Board, the Chairman of the Social Security Board, the Secretary of Labor, the Chief of the Children's Bureau and the Children's Bureau, except that:

"a. The Administrator shall serve as member of the Board of Trustees of the

Federal Old-Age and Survivors Insurance Trust Fund. During the absence or disability of the Administrator, the Commissioner for Social Security shall serve as a member of the board in his stead.

"b. The annual report required to be submitted to the Congress by the Secretary of Labor relating to the administration of title V of the Social Security Act, as amended [sections 701–704, 705, 711–715, 721, and 731 of this title], and other work of the Children's Bureau shall be submitted by the Administrator;

"c. Approval of conferences called by the Children's Bureau and authorization of expenses of attendance at meetings related to the work of the Children's Bureau, to the extent that approval or authorization is required under the Labor Appropriation Act, 1947 [Act July 26, 1946, c. 672, 60 Stat. 682], shall be given by the Administrator;

"d. All duties, powers, and functions relating to the holding of hearings, the rendition of decisions, and the review of decisions in connection wtih administrative appeals from determinations made under title II of the Social Security Act, as amended [subchapter II of this chapter], and affecting benefits, lump sums or wage records, including the administration of oaths and affirmations, the issuance of subpoenas, the examination of witnesses and the receipt of evidence, and all duties, powers, and functions relating to judicial review of decisions made upon appeal, which were transferred from the Social Security Board by Reorganization Plan No. 2 of 1946 [set out as a note under section 133y—16 of Title 5] are assigned to the Office of Appeals Council in the Social Security Administration and shall be exercised by the Appeals Council, the members and referees in accordance with applicable rules as from time to time amended by the Commissioner with the approval of the Administrator;

"e. The functions heretofore performed by the Children's Bureau in the Department of Labor shall continue to be performed through the Children's Bureau in the Social Security Administration.

"2. The Commissioner shall perform such duties, powers and functions himself or under his direction and supervision, through such officers and employees of the Federal Security Agency as he may designate for the purpose and through such bureaus and offices in the Social Security Administration as may be established with the approval of the Administrator. Unless changed by or pursuant to the provisions of this and other agency orders, the various bureaus and offices formerly in the Social Security Board and the Children's Bureau shall continue to perform the same functions, and their heads shall have and exercise the same duties and powers they had and exercised prior to July 16, 1946."

Cross References

Exchange of reports of records of compensation or wages and periods of service with Railroad Retirement Board, see section 228e(k) (3) of Title 45, Railroads.

Special joint report with Railroad Retirement Board as to distribution of financial burden between Federal Old Age and Survivors Insurance Trust Fund and Railroad Retirement Account, see section 228e(k) (2) of Title 45.

§ 903. Expenses of Secretary; appointment and compensation of officers and employees

The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out his functions under this chapter. Appointments of attorneys and experts may be made without regard to the civil-service laws. Aug. 14, 1935, c. 531, Title VII, § 703, 49 Stat. 636; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(c), (d), 64 Stat. 558; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.

Library references: Social Security and Public Welfare ⇐5, 7; C.J.S. Social Security and Public Welfare §§ 9, 11.

Historical Note

Refcrences in Text. The civil-service laws, referred to in the text, are classified generally to Title 5, Executive Departments and Government Officers and Employees.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board", and "he", "him", or "his" for "it" or "its" wherever appearing by Act Aug. 28, 1950.

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

Social Security Board and its functions were consolidated with other agencies under Federal Security Agency, see note under section 902 of this title.

§ 904. Annual report to Congress

The Secretary shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which he is charged under this chapter. In addition to the number of copies of such report authorized by other law to be printed, there is authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program. Aug. 14, 1935, c. 531, Title VII, § 704, 49 Stat. 636; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title IV, § 402(b), 64 Stat. 558; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.

Library references: Social Security and Public Welfare ⇐5; C.J.S. Social Security and Public Welfare § 9.

Historical Note

1950 Amendment. Act Aug. 28, 1950 substituted "Administrator" for "Board" in first sentence and added second sentence.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board" by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

Social Security Board and its functions were consolidated with other agencies under Federal Security Agency, see note under section 902 of this title.

§ 905. Working capital fund; establishment; amount; use; reimbursement

There is established a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and

operation of (1) a central reproduction service; (2) a central visual exhibit service; (3) a central supply service for supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department; (4) a central tabulating service; (5) telephone, mail, and messenger services; (6) a central accounting and payroll service; and (7) a central laborers' service: *Provided,* That any stocks of supplies and equipment on hand or on order shall be used to capitalize such fund: *Provided further,* That such fund shall be reimbursed in advance from funds available to bureaus, offices, and agencies for which such centralized services are performed at rates which will return in full all expenses of operation, including reserves for accrued annual leave and depreciation of equipment. July 5, 1952, c. 575, Title II, § 201, 66 Stat. 369; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 2, 1960, Pub.L. 86–703, Title II, § 201, 74 Stat. 773.

Library references: Social Security and Public Welfare ⇨4; C.J.S. Social Security and Public Welfare § 8.

Historical Note

Codification. Section was enacted as a part of the Federal Security Agency Appropriation Act, 1953 and not as a part of the Social Security Act which comprises this chapter.

1960 Amendment. Pub.L. 86–703 made the fund available for the maintenance and operation of a central visual exhibit service, telephone, mail and messenger services, a central accounting and payroll service, and a central laborers' service.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

§ 906. Training grants for public welfare personnel

(a) In order to assist in increasing the effectiveness and efficiency of administration of public assistance programs by increasing the number of adequately trained public welfare personnel available for work in public assistance programs, there are authorized to be appropriated for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000.

(b) Such portion of the sums appropriated pursuant to subsection (a) of this section for any fiscal year as the Secretary may determine, but not in excess of $1,000,000 in the case of the fiscal year ending June 30, 1963, and $2,000,000 in the case of any fiscal year thereafter, shall be available for carrying out subsection (f) of this section. From the remainder of the sums so appropriated for any fiscal year, the Secretary shall make allotments to the States on the basis of (1) population, (2) relative need for trained public welfare personnel, particularly for personnel to provide self-support and self-care services, and (3) financial need.

(c) From each State's allotment under subsection (b) of this section, the Secretary shall from time to time pay to such State its costs of carrying out the purposes of this section through (1) grants to public or other nonprofit institutions of higher learning for training personnel employed or preparing for employment in public assistance programs, (2) special courses of study or seminars of short duration conducted for such personnel by experts hired on a temporary basis for the purpose, and (3) establishing and maintaining, directly or through grants to such institutions, fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted under regulations of the Secretary.

(d) Payments pursuant to subsection (c) of this section shall be made in advance on the basis of estimates by the Secretary and adjustments may be made in future payments under this section to take account of overpayments or underpayments in amounts previously paid.

(e) The amount of any allotment to a State under subsection (b) of this section for any fiscal year which the State certifies to the Secretary will not be required for carrying out the purposes of this section in such State shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines have need in carrying out such purposes for sums in excess of those previously allotted to them under this section and will be able to use such excess amounts during such fiscal year; such reallotments to be made on the basis provided in subsection (b) of this section for the initial allotments to the States. Any amount so reallotted to a State shall be deemed part of its allotment under such subsection.

(f) (1) The portion of the sums appropriated for any fiscal year which is determined by the Secretary under the first sentence of subsection (b) of this section to be available for carrying out this subsection shall be available to enable him to provide (A) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for training personnel who are employed or preparing for employment in the administration of public assistance programs, (B) directly or through grants to or contracts with public or nonprofit private agencies or institutions, for special courses of study or seminars of short duration (not in excess of one year) for training of such personnel, and (C) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for establishing and maintaining fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted by the Secretary.

(2) Payments under paragraph (1) may be made in advance on the basis of estimates by the Secretary, or may be made by way of reimbursement, and adjustments may be made in future payments under

this subsection to take account of overpayments or underpayments in amounts previously paid.

(3) The Secretary may, to the extent he finds such action to be necessary, prescribe requirements to assure that any individual will repay the amount of his fellowship or traineeship received under this subsection to the extent such individual fails to serve, for the period prescribed by the Secretary, with a State or political subdivision thereof, or with the Federal Government, in connection with administration of any State or local public assistance program. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that requirement of such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the public welfare programs established by this chapter. Aug. 14, 1935, c. 531, Title VII, § 705, as added Aug. 1, 1956, c. 836, Title III, § 332, 70 Stat. 851, and amended May 8, 1961, Pub.L. 87–31, § 3, 75 Stat. 77; July 25, 1962, Pub.L. 87–543, Title I, § 123(a)–(c), 76 Stat. 192.

Library references: Social Security and Public Welfare ⇨7; United States ⇨85; C.J.S. Social Security and Public Welfare § 11; C.J.S. United States § 123.

Historical Note

1962 Amendment. Subsec. (a). Pub.L. 87–543, § 123(a), substituted "for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000" for "for the fiscal year ending June 30, 1958, the sum of $5,000,000, and for each of the five succeeding fiscal years such sums as the Congress may determine."

Subsec. (b). Pub.L. 87–543, § 123(b), required appropriated moneys to be made available for carrying out subsec. (f) of this section.

Subsec. (f). Pub.L. 87–543, § 123(c), added subsec. (f).

1961 Amendment. Subsec. (a). Pub.L. 87–31, § 3(a), substituted "five" for "four."

Subsec. (c). Pub.L. 87–31, § 3(b), substituted "its costs of carrying out the purposes of this section" for "80 per centum of the total of its expenditures in carrying out the purposes of this section."

Effective Date of 1962 Amendment. Amendment of subsecs. (a) and (b) and enactment of subsec. (f) of this section by section 123(a)–(c) of Pub.L. 87–543 applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub.L. 87–543, set out as a note under section 722 of this title.

Effective Date of 1961 Amendment. Section 3(b) of Pub.L. 87–31 provided in part that the amendment of subsec. (c) by such section 3(b) shall be effective with respect to payments from allotments from appropriations made for fiscal years beginning after June 30, 1961.

Definition of "Secretary". Secretary as used in this section means the Secretary of Health, Education, and Welfare, see section 119 of Act Aug. 1, 1956, set out as a note under section 416 of this title.

Legislative History: For legislative history and purpose of Pub.L. 87–31, see 1961 U.S.Code Cong. and Adm.News, p. 1716. See, also, Pub.L. 87–543, 1962 U.S. Code Cong. and Adm.News, p. 1943.

SUBCHAPTER VIII.—TAXES WITH RESPECT TO EMPLOYMENT

§§ 1001–1011. Omitted

Historical Note

Codification. Sections, Act Aug. 14, 1935, c. 531, Title VIII, §§ 801–811, 49 Stat. 636–639, related to taxes with respect to employment. Section 4 of Act Feb. 10, 1939, c. 2, 53 Stat. 1, which Act enacted Title 26, I.R.C.1939, provided that all laws and parts of laws codified into the I.R.C.1939, to the extent that they related exclusively to internal revenue laws, were repealed. See enacting sections preceding section 1 of Title 26, I.R.C.1939. Provisions of I.R.C.1939 were generally repealed by section 7851 of Title 26, I.R.C. 1954 (Act Aug. 16, 1954, c. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C.1954, respecting rules in effect upon enactment of I.R.C.1954. The omitted sections were formerly and are now covered by certain sections in Title 26, I.R.C.1939 and I.R.C.1954, respectively, as follows:

Omitted Sections	I.R.C.1939	I.R.C.1954
1001	1400	3101
1002	1402	3502
1003	1401	3102(a), (b) 6205(a), 6413(a) (1), (c) (1), (c) (2)
1004	1410	3111
1005	1411	6205(a), 6413(a)
1006	1421	6205(b), 6413(b)
1007	1420, 1430	3122, 3501, 6011(a), 6071, 6081(a), 6091(a), 6302(b), 6313, 6601(a), (f) (1)
1008	1429	7805(a), (c)
1009	1423, 1424	6802(1), 6803(a) (1), (a) (2), 7509
1010	1425	7208(1), 7209
1011 (as amended Aug. 10, 1939, c. 666, Title IX, § 905(a), 53 Stat. 1400)	1426	3121, 7701(a) (1)

SUBCHAPTER IX.—EMPLOYMENT SECURITY ADMINISTRATIVE FINANCING

Library references: Social Security and Public Welfare ⇐4; C.J.S. Social Security and Public Welfare § 8.

Historical Note

1954 Amendment. Act Aug. 5, 1954, c. 657, § 2, 68 Stat. 668, in amending generally this subchapter, substituted subchapter heading "Employment Security Administrative Financing" for "Tax on Employers of Eight or More."

Prior Law; Tax on Employers of Eight or More. Former subchapter IX, sections 1101–1103, 1105–1110, Act Aug. 14, 1935, c. 531, Title IX, §§ 901–903, 905–910, 49 Stat. 639–644, related to taxes on employers of eight or more. Section 4 of Act Feb. 10, 1939, c. 2, 53 Stat. 1, which Act enacted Title 26, I.R.C.1939, provided that all laws and parts of laws codified into the I.R.C.1939, to the extent that they related exclusively to internal revenue laws, were repealed. See enacting sections preceding section 1 of Title 26, I.R.C.1939. Provisions of I.R.C.1939 were generally repealed by section 7851 of

Title 26, I.R.C.1954 (Act Aug. 16, 1954, c. 736, 68A Stat. 3). See, also, section 7807 of Title 26, I.R.C.1954, respecting rules in effect upon enactment of I.R.C. 1954. Said prior law sections were formerly and are now covered by certain sections in Title 26, I.R.C.1939 and I.R.C. 1954, respectively, as follows:

Former Sections	I.R.C.1939	I.R.C.1954
1101	1600	3301
1102	1601(a)	3302
1103 (as amended 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg.Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065)	1603	3304
1105	1604, 1605, 1610	3501, 6011(a), 6065, 6071, 6081(a), 6091(b) (1), (2), 6106, 6152(a) (3), (b), 6161(a) (1), 6313, 6601(a) (f) (1)
1106	1606	3305
1107 (as amended Act June 25, 1938, c. 680, § 13 (a), 52 Stat. 1110)	1607	3306, 7701(a) (1)
1108	1609	7805(a), (c)
1109	1601(b), (c)	3302
1110 (as amended 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg.Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065)	1602	3303

Repair of 1938 Hurricane Damage. Act Aug. 11, 1939, c. 719, § 1, 53 Stat. 1420, provided that no special security taxes should be collected for work done prior to Jan. 1, 1940, in cleaning up debris and damage caused by the 1938 hurricane.

Credits Against Social Security Tax. Act Aug. 10, 1939, c. 666, Title IX, § 902 (a)-(d), (h), 53 Stat. 1399, provided for a credit against the social security tax of certain contributions made with respect to employment during calendar years 1936, 1937, or 1938. Said Act Aug. 10, 1939, was affected by Act Sept. 20, 1941, c. 412, Title VII, § 701(c), 55 Stat. 728.

Act May 28, 1938, c. 289, § 810, 52 Stat. 576 (see 26 U.S.C.A. Internal Revenue Acts), related to credits against Social Security Tax for 1936. It was affected by Act Sept. 20, 1941, c. 412, Title VII, § 701(c), 55 Stat. 728, relating to credit against Federal unemployment taxes.

§ 1101. Employment Security Administration Account—Establishment

(a) There is established in the Unemployment Trust Fund an employment security administration account.

Amount credited to the Account; transfer of funds; adjustments; repayment of internal revenue refunds

(b) (1) There is appropriated to the Unemployment Trust Fund for credit to the employment security administration account, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1961, and for each fiscal year thereafter, an amount equal to 100 per centum of the tax (including interest, penal-

ties, and additions to the tax) received during the fiscal year under the Federal Unemployment Tax Act and covered into the Treasury.

(2) The amount appropriated by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Unemployment Trust Fund and credited to the employment security administration account. Each such transfer shall be based on estimates made by the Secretary of the Treasury of the amounts received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred, to the extent prior estimates (including estimates for the fiscal year ending June 30, 1960) were in excess of or were less than the amounts required to be transferred.

(3) The Secretary of the Treasury is directed to pay from time to time from the employment security administration account into the Treasury, as repayments to the account for refunding internal revenue collections, amounts equal to all refunds made after June 30, 1960, of amounts received as tax under the Federal Unemployment Tax Act (including interest on such refunds).

Administrative expenditures; necessary expenses; quarterly transfer of funds; adjustments; limitation; estimate of net receipts

(c) (1) There are authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, 1964, and for each fiscal year thereafter—

(A) such amounts (not in excess of the limit provided by paragraph (3)) as the Congress may deem appropriate for the purpose of—

(i) assisting the States in the administration of their unemployment compensation laws as provided in subchapter III of this chapter (including administration pursuant to agreements under any Federal unemployment compensation law, except the Temporary Unemployment Compensation Act of 1958, as amended),

(ii) the establishment and maintenance of systems of public employment offices in accordance with sections 49–49c, 49d, 49g, 49h, 49j, and 49k of Title 29, and

(iii) carrying into effect section 2012 of Title 38;

(B) such amounts as the Congress may deem appropriate for the necessary expenses of the Department of Labor for the performance of its functions under—

(i) this subchapter and subchapters III and XII of this chapter,

(ii) the Federal Unemployment Tax Act,

(iii) the provisions of sections 49–49c, 49d, 49g, 49h, 49j, and 49k of Title 29,

(iv) subchapter II of chapter 41 (except section 2012) of Title 38 and

(v) any Federal unemployment compensation law, except the Temporary Unemployment Compensation Act of 1958, as amended.

The term "necessary expenses" as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees for travel expenses, transportation of household goods, and per diem in lieu of subsistence while away from their regular duty stations in the State, at rates authorized by law for civilian employees of the Federal Government.

(2) The Secretary of the Treasury is directed to pay from the employment security administration account into the Treasury as miscellaneous receipts the amount estimated by him which will be expended during a three-month period by the Treasury Department for the performance of its functions under—

(A) this subchapter and subchapters III and XII of this chapter, including the expenses of banks for servicing unemployment benefit payment and clearing accounts which are offset by the maintenance of balances of Treasury funds with such banks,

(B) the Federal Unemployment Tax Act, and

(C) any Federal unemployment compensation law with respect to which responsibility for administration is vested in the Secretary of Labor.

In determining the expenses taken into account under subparagraphs (B) and (C), there shall be excluded any amount attributable to the Temporary Unemployment Compensation Act of 1958, as amended. If it subsequently appears that the estimates under this paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Secretary of the Treasury in future payments.

(3) For purposes of paragraph (1) (A), the limitation on the amount authorized to be made available for any fiscal year is—

(A) in the case of the fiscal year ending June 30, 1964, an amount equal to 95 percent of the amount estimated by the Secretary of the Treasury as the net receipts during such fiscal year under the Federal Unemployment Tax Act, and

(B) in the case of any fiscal year thereafter, an amount equal to 95 percent of the amount estimated and set forth in the Budget of the United States Government for such fiscal year as the net receipts during such year under the Federal Unemployment Tax Act.

Each estimate of net receipts under this paragraph shall be based on a tax rate of 0.4 percent. The Secretary of the Treasury shall report his estimate under subparagraph (A) to the Congress within 30 days after the date of the enactment of this paragraph. Such report shall be printed as a House document.

Additional tax attributable to reduced credits; transfer of funds

(d) (1) The Secretary of the Treasury is directed to transfer from the employment security administration account—

(A) To the Federal unemployment account, an amount equal to the amount by which—

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act with respect to any State by reason of the reduced credits provisions of section 3302(c) (2) or (3) of such Act and covered into the Treasury for the repayment of advances made to the State under section 1321 of this title, exceeds

(ii) the amount transferred to the account of such State pursuant to subparagraph (B) of this paragraph.

Any amount transferred pursuant to this subparagraph shall be credited against, and shall operate to reduce, that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which such additional tax received and covered into the Treasury exceeds that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

If, for any taxable year, there is with respect to any State both a balance described in section 3302(c) (2) of the Federal Unemployment Tax Act and a balance described in section 3302(c) (3) of such Act, this paragraph shall be applied separately with respect to section 3302(c) (2) (and the balance described therein) and separately with respect to section 3302(c) (3) (and the balance described therein).

(2) The Secretary of the Treasury is directed to transfer from the employment security administration account—

(A) To the general fund of the Treasury, an amount equal to the amount by which—

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act with respect to any State by reason of the reduced credit provision of section 1400c of this title, and covered into the Treasury, exceeds

(ii) the amount transferred to the account of such State pursuant to subparagraph (B) of this paragraph.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which—

(i) such additional tax received and covered into the Treasury, exceeds

(ii) the total amount restorable to the Treasury under section 1400c of this title, as limited by Public Law 85–457.

(3) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b) (2) of this section.

Revolving fund; appropriations; advances to the Account; repayment; interest

(e) (1) There is established in the Treasury a revolving fund which shall be available to make the advances authorized by this subsection. There are authorized to be appropriated, without fiscal year limitation, to such revolving fund such amounts as may be necessary for the purposes of this section.

(2) The Secretary of the Treasury is directed to advance from time to time from the revolving fund to the employment security administration account such amounts as may be necessary for the purposes of this section. If the net balance in the employment security administration account as of the beginning of any fiscal year is $250,000,000, no advance may be made under this subsection during such fiscal year.

(3) Advances to the employment security administration account made under this subsection shall bear interest until repaid at a rate equal to the average rate of interest (computed as of the end of the calendar month next preceding the date of such advance) borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) Advances to the employment security administration account made under this subsection, plus interest accrued thereon, shall be repaid by the transfer from time to time, from the employment security administration account to the revolving fund, of such amounts as the Secretary of the Treasury, in consultation with the Secretary of Labor, determines to be available in the employment security administration account for such repayment. Any amount transferred as a repayment under this paragraph shall be credited against, and shall operate to reduce, any balance of advances (plus accrued interest) repayable under this subsection.

Determination of excess in the Account; limitation on amount to be retained; net balance

(f) (1) The Secretary of the Treasury shall determine as of the close of each fiscal year (beginning with the fiscal year ending June 30, 1961) the excess in the employment security administration account.

(2) The excess in the employment security administration account as of the close of any fiscal year is the amount by which the net balance in such account as of such time (after the application of section 1102(b) of this title) exceeds the net balance in the employment security administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher than as of the beginning of any other such fiscal year.

(3) If the entire amount of the excess determined under paragraph (1) as of the close of any fiscal year is not transferred to the Federal unemployment account, there shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account so much of the remainder as does not increase the net balance in such account (as of the beginning of such succeeding fiscal year) above $250,000,000.

(4) For the purposes of this section, the net balance in the employment security administration account as of any time is the amount in such account as of such time reduced by the sum of—

(A) the amounts then subject to transfer pursuant to subsection (d) of this section, and

(B) the balance of advances (plus interest accrued thereon) then repayable to the revolving fund established by subsection (e) of this section.

The net balance in the employment security administration account as of the beginning of any fiscal year shall be determined after the disposition of the excess in such account as of the close of the preceding fiscal year. Aug. 14, 1935, c. 531, Title IX, § 901, as added Aug. 5, 1954, c. 657, § 2, 68 Stat. 668, and amended Sept. 13, 1960, Pub.L. 86–778, Title V, § 521, 74 Stat. 970; May 8, 1961, Pub.L. 87–31, § 7, 75 Stat. 78; May 29, 1963, Pub.L. 88–31, § 1, 77 Stat. 51.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

References in Text. The Federal Unemployment Tax Act, referred to in subsecs. (b) (1), (3), (c) (1) (B) (ii), (2) (B), (3) (A), (B), (d) (1) (A) (i), (2) (A) (i), is classified to chapter 23 of Title 26, Internal Revenue Code.

Section 3302(c) (2) or (3) of such Act, referred to in subsec. (d) (1) (A) (i), and section 3302(c) (2) of the Federal Unemployment Tax Act, section 3302(c) (2) and (3) of such Act, referred throughout the concluding paragraph of subsec. (d) (1), are references to section 3302(c) (2) and (3) of Title 26, Internal Revenue Code.

The Temporary Unemployment Compensation Act of 1958, as amended, referred to in subsec. (c) (1) (A) (i), (B) (v) and concluding paragraph of sub-

sec. (c) (2) is classified to chapter 7A of this title.

Within 30 days after the date of enactment of this paragraph, referred to in subsec. (c) (3), means within 30 days after the enactment of Pub.L. 88–31, approved May 29, 1963.

1963 Amendment. Subsec. (c). Pub.L. 88–31 substituted "June 30, 1964" for "June 30, 1961" in par. (1), "(not in excess of the limit provided by paragraph (3))" for "not in excess of $350,000,000 for any fiscal year)" in par. (1) (A), and added par. (3).

1961 Amendment. Subsec. (c) (1) (B). Pub.L. 87–31 added the provision relating to necessary expenses.

1960 Amendment. Subsec. (a). Pub.L. 86–778 substituted the provision establishing the employment security administration account for former provision making an appropriation to the Unemployment Trust Fund for fiscal year ending June 30, 1954 and for each fiscal year thereafter, providing for transfer of funds from the general fund in the Treasury to the Unemployment Trust Fund at the close of the fiscal year, and adjustments in the transfers, and requiring the Secretary of the Treasury to consult with the Secretary of Labor with respect to estimates of employment security administrative expenditures.

Subsec. (b). Pub.L. 86–778 substituted provisions crediting the employment security administration with funds, and requiring transfer of funds, adjustments and repayment of internal revenue refunds for former provisions defining the term "employment security administrative expenditures", now incorporated in subsec. (c) (1) (A) (B), (2) (A) of this section.

Subsecs. (c)–(f). Pub.L. 86–778 added subsecs. (c)–(f).

Short Title. Section 501 of Pub.L. 86–778 provided that Title V of Pub.L. 86–778, which enacted section 3308 of Title 26, Internal Revenue Code, amended this section and sections 501, 1102–1104, 1301, 1321–1324, 1361–1364, 1367, 1371 and 1400c of this title, sections 3301, 3302, 3305 and 3306 of Title 26, and section 49d of Title 29, Labor, and enacted provisions set out as notes under sections 1301, 1321 and 1362–1364 of this title, under sections 3301, 3304 and 3305 of Title 26, and under section 49d of Title 29, may be cited as the "Employment Security Act of 1960."

Section 1 of Act Aug. 5, 1954 provided: "That this Act [enacting amendments to sections 503, 1101–1104, and 1321–1323 of this title, and sections 1601, 1603, and 1607 of Title 26, I.R.C.1939] may be cited as the 'Employment Security Administrative Financing Act of 1954'."

Prior Law; Tax on Employers of Eight or More. See general note preceding section 1101 of this title.

Increase in Administrative Expenditures Limitation for Fiscal Year 1963. Section 4 of Pub.L. 88–31 provided that: "Notwithstanding section 901(c) (1) (A) of the Social Security Act [subsec. (c) (1) (A) of this section], the limitation on the amount authorized to be made available for the fiscal year ending June 30, 1963, for the purposes specified in such section 901(c) (1) (A) [subsec. (c) (1) (A) of this section] is hereby increased to $407,148,000."

Section 101 of Pub.L. 87–582, Title I, Aug. 14, 1962, 76 Stat. 363, provided that: "Notwithstanding section 901(c) (1) (A) of the Social Security Act [subsec. (c) (1) (A) of this section], the limitation on the amount authorized to be made available for the fiscal year ending June 30, 1963, for the purposes specified in such section 901(c) (1) (A) [such subsec. (c) (1) (A)] is hereby increased to $400,000,000."

Increase in Administrative Expenditures Limitation for Fiscal Years 1961 and 1962. Section 15 of Pub.L. 87–6, Mar. 24, 1961, 75 Stat. 16, provided that: "Notwithstanding section 901(c) (1) (A) of the Social Security Act [subsec. (c) (1) (A) of this section], the limitation on the amount authorized to be made available for the fiscal years ending on June 30, 1961, and 1962, for the purposes specified in such section 901(c) (1) (A) [such subsec. (c) (1) (A)] is hereby increased to—

"(1) $385,000,000 for the fiscal year ending June 30, 1961, and

"(2) $415,000,000 for the fiscal year ending June 30, 1962."

Legislative History: For legislative history and purpose of Act Aug. 5, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2909. See, also, Pub.L. 86–778, 1960 U.S.Code Cong. and Adm.News, p. 3608; Pub.L. 87–31, 1961 U.S.Code Cong. and Adm.News, p. 1716; Pub.L. 88–31, 1963 U.S.Code Cong. and Adm.News, p. 674.

§ 1102. Transfers between Federal Unemployment Account and Employment Security Administration Account

(a) Whenever the Secretary of the Treasury determines pursuant to section 1101(f) of this title that there is an excess in the employment security administration account as of the close of any fiscal year, there shall be transferred (as of the beginning of the succeeding fiscal year) to the Federal unemployment account the total amount of such excess or so much thereof as is required to increase the amount in the Federal unemployment account to whichever of the following is the greater:

(1) $550,000,000, or

(2) The amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to four-tenths of 1 per centum of the total wages subject to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

(b) The amount, if any, by which the amount in the Federal unemployment account as of the close of any fiscal year exceeds the greater of the amounts specified in paragraphs (1) and (2) of subsection (a) of this section shall be transferred to the employment security administration account as of the close of such fiscal year. Aug. 14, 1935, c. 531, Title IX, § 902, as added Aug. 5, 1954, c. 657, § 2, 68 Stat. 669, and amended Sept. 13, 1960, Pub.L. 86–778, Title V, § 521, 74 Stat. 974.

Historical Note

1960 Amendment. Pub.L. 86–778 substituted provisions for transfers between Federal unemployment account and employment security administration account for former provisions crediting the Federal unemployment account with funds and defining the term "adjusted balance".

Prior Law; Tax on Employers of Eight or More. See general note preceding section 1101 of this title.

Legislative History: For legislative history and purpose of Pub.L. 86–778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

§ 1103. Amounts transferred to State accounts—Determination and certification by Secretary of Labor

(a) (1) Except as provided in subsection (b) of this section, whenever, after the application of section 1323 of this title with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, the remainder of such excess shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund.

(2) Each State's share of the funds to be transferred under this subsection as of any July 1—

(A) shall be determined by the Secretary of Labor and certified by him to the Secretary of the Treasury before that date on the basis of reports furnished by the States to the Secretary of Labor before June 1, and

(B) shall bear the same ratio to the total amount to be so transferred as the amount of wages subject to contributions under such State's unemployment compensation law during the preceding calendar year which have been reported to the State before May 1 bears to the total of wages subject to contributions under all State unemployment compensation laws during such calendar year which have been reported to the States before May 1.

Transfer of funds where State is ineligible

(b) (1) If the Secretary of Labor finds that on July 1 of any fiscal year—

(A) a State is not eligible for certification under section 503 of this title, or

(B) the law of a State is not approvable under section 3304 of Title 26,

then the amount available for transfer to such State's account shall, in lieu of being so transferred, be transferred to the Federal unemployment account as of the beginning of such July 1. If, during the fiscal year beginning on such July 1, the Secretary of Labor finds and certifies to the Secretary of the Treasury that such State is eligible for certification under section 503 of this title, that the law of such State is approvable under such section 3304, or both, the Secretary of the Treasury shall transfer such amount from the Federal unemployment account to the account of such State. If the Secretary of Labor does not so find and certify to the Secretary of the Treasury before the close of such fiscal year then the amount which was available for transfer to such State's account as of July 1 of such fiscal year shall (as of the close of such fiscal year) become unrestricted as to use as part of the Federal unemployment account.

(2) The amount which, but for this paragraph, would be transferred to the account of a State under subsection (a) or paragraph (1) of this subsection shall be reduced (but not below zero) by the balance of advances made to the State under section 1321 of this title. The sum by which such amount is reduced shall—

(A) be transferred to or retained in (as the case may be) the Federal unemployment account, and

(B) be credited against, and operate to reduce—

(i) first, any balance of advances made before September 13, 1960 to the State under section 1321 of this title, and

(ii) second, any balance of advances made on or after September 13, 1960 to the State under section 1321 of this title.

Use of funds

(c) (1) Except as provided in paragraph (2), amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section shall be used only in the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

(2) A State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it for the administration of its unemployment compensation law and public employment offices if and only if—

(A) the purposes and amounts were specified in the law making the appropriation,

(B) the appropriation law did not authorize the obligation of such money after the close of the two-year period which began on the date of enactment of the appropriation law,

(C) the money is withdrawn and the expenses are incurred after such date of enactment, and

(D) the appropriation law limits the total amount which may be obligated during a fiscal year to an amount which does not exceed the amount by which (i) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b) of this section during such fiscal year and the nine preceding fiscal years, exceeds (ii) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State during such ten fiscal years.

For the purposes of subparagraph (D), amounts used by a State during any fiscal year shall be charged against equivalent amounts which were first transferred and which have not previously been so charged; except that no amount obligated for administration during any fiscal year may be charged against any amount transferred during a fiscal year earlier than the ninth preceding fiscal year. Aug. 14, 1935, c. 531, Title IX, § 903, as added Aug. 5, 1954, c. 657, § 2, 68 Stat. 670, and amended Sept. 13, 1960, Pub.L. 86–778, Title V, § 521, 74 Stat. 974; May 29, 1963, Pub.L. 88–31, § 3, 77 Stat. 51.

Historical Note

1963 Amendment. Subsec. (c) (2). Pub. L. 88–31 substituted "nine preceding fiscal years" for "four preceding fiscal years", "ten fiscal years" for "five fiscal years" in clause (D), and "ninth preceding fiscal year" for "fourth preceding fiscal year" in the last sentence.

1960 Amendment. Subsec. (a). Pub. L. 86–778 substituted the provisions of par. (1) for the first sentence of the section which read "So much of any amount transferred to the Unemployment Trust Fund at the close of any fiscal year under section 1101(a) of this title as is not

credited to the Federal unemployment account under section 1102 of this title shall be credited (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund" and designated existing provisions of the second sentence as par. (2), substituting "transferred" for "credited" therein and deleting "on or" preceding "before" in subpar. (A).

Subsec. (b). Pub.L. 86–778 redesignated existing provisions as par. (1) and clauses (1) and (2) thereof as subpars. (A) and (B), substituted "section 3304 of Title 26" for "section 1603 of Title 26", in two instances, and "transfer to such States' account", "transferred", and "transfer" for "crediting to such States' account", "credited" and "credit", respectively, except where already reading "shall transfer", and added par. (2).

Subsec. (c). Pub.L. 86–778 substituted "transferred" for "credited", wherever appearing, "obligation" for "expenditure" in par. (2) (B), "obligated" for "so used" in par. (2) (D), and "obligated for administration" for "used" in concluding par., inserted references to subsection (b) in pars. (1) and (2) (D), and deleted "any of" preceding "such five fiscal years" in par. (2) (D).

Prior Law; Tax on Employers of Eight or More. See general note preceding section 1101 of this title.

Legislative History: For legislative history and purpose of Pub.L. 86–778, see 1960 U.S.Code Cong. and Adm.News, p. 3608. See, also, Pub.L. 88–31, 1963 U.S. Code Cong. and Adm.News, p. 674.

§ 1104. Unemployment Trust Fund—Establishment

(a) There is established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this subchapter called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury, with any depositary designated by him for such purpose, or with any Federal Reserve Bank.

Investments

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such

special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

Sale or redemption of obligations

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

Treatment of interest and proceeds

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

Separate book accounts

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, the employment security administration account, the Federal unemployment account, the railroad unemployment insurance account, and the railroad unemployment insurance administration fund and shall credit quarterly (on March 31, June 30, September 30, and December 31, of each year) to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date. For the purpose of this subsection, the average daily balance shall be computed—

(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the balance of advances made to the State under section 1321 of this title, and

(2) in the case of the Federal unemployment account—

(A) by adding to the amount in the account the aggregate of the reductions under paragraph (1), and

(B) by subtracting from the sum so obtained the balance of advances made under section 1323 of this title to the account.

Payment to State agencies and Railroad Retirement Board

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment. The Secretary of the Treasury is authorized and directed to make such payments out of the railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administra-

tion fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment.

Federal Unemployment Account; establishment; appropriation; unemployment administrative expenditures

(g) There is established in the Unemployment Trust Fund a Federal unemployment account. There is authorized to be appropriated to such Federal unemployment account a sum equal to (1) the excess of taxes collected prior to July 1, 1946, under title IX of this Act or under the Federal Unemployment Tax Act, over the total unemployment administrative expenditures made prior to July 1, 1946, plus (2) the excess of taxes collected under the Federal Unemployment Tax Act after June 30, 1946, and prior to July 1, 1953, over the unemployment administrative expenditures made after June 30, 1946, and prior to July 1, 1953. As used in this subsection, the term "unemployment administrative expenditures" means expenditures for grants under subchapter III of this chapter, expenditures for the administration of that subchapter by the Social Security Board, the Federal Security Administrator, or the Secretary of Labor, and expenditures for the administration of title IX of this Act, or of the Federal Unemployment Tax Act, by the Department of the Treasury, the Social Security Board, the Federal Security Administrator, or the Secretary of Labor. For the purposes of this subsection, there shall be deducted from the total amount of taxes collected prior to July 1, 1943, under title IX of this Act, the sum of $40,561,886.43 which was authorized to be appropriated by the Act of August 24, 1937 (50 Stat. 754) and the sum of $18,451,846 which was authorized to be appropriated by section 361(b) of Title 45. Aug. 14, 1935, c. 531, Title IX, § 904, 49 Stat. 640; June 25, 1938, c. 680, § 10(e–g), 52 Stat. 1104, 1105; Oct. 3, 1944, c. 480, Title IV, § 401, 58 Stat. 789; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 6, 1947, c. 510, § 5 (a), 61 Stat. 794; 1949 Reorg.Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5325, 63 Stat. 1065; Aug. 28, 1950, c. 809, Title IV, § 404(b), 64 Stat. 560; Aug. 5, 1954, c. 657, § 5(b–f), 68 Stat. 673; Sept. 6, 1958, Pub.L. 85–927, Pt. II, § 204, 72 Stat. 1782; Sept. 22, 1959, Pub.L. 86–346, Title I, § 104(3), 73 Stat. 622; Sept. 13, 1960, Pub.L. 86–778, Title V, § 521, 74 Stat. 976.

Historical Note

References in Text. The Second Liberty Bond Act, as amended, referred to in subsec. (b), is classified to sections 745, 752–754b, 757, 757b–758, 760, 764–766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

Title IX of this Act, referred to in subsec. (g), was formerly set out as sections 1101–1103, 1105–1110 of this title. See "Prior Law, Tax on Employers of Eight or More" Note set out preceding section 1101 of this title.

The Federal Unemployment Tax Act, referred to in subsec. (g), was formerly classified to sections 1600–1611 of Title 26, Internal Revenue Code, 1939. Said sections were repealed by section 7851 of Title 26, I.R.C.1954, and are now covered by sections 3301–3308 of said Title 26. For provision deeming a reference in

other laws to a provision of I.R.C.1939, also as a reference to corresponding provision of I.R.C.1954, see section 7852(b) of said Title 26.

Act of August 24, 1937 (50 Stat. 754), referred to in subsec. (g), is Act Aug. 24, 1937, c. 755, 50 Stat. 754, and is set out as a note below.

1960 Amendment. Subsec. (a). Pub.L. 86-778 substituted "with any depositary designated by him for such purpose, or with any Federal Reserve Bank" for "or with any Federal Reserve bank or member bank of the Federal Reserve System designated by him for such purpose."

Subsec. (b). Pub.L. 86-778 substituted "Second Liberty Bond Act, as amended" and "section 1323" for "section 752 of Title 31" and "section 1322(c)", respectively, and inserted "made" following "Advances."

Subsec. (e). Pub.L. 86-778 provided for the maintenance of a separate book account for the employment security administration account and substituted "balance of advances made to the State under section 1321 of this title" for "aggregate of the outstanding advances under section 1321 of this title from the Federal unemployment account" in par. (1) and "balance of advances made under section 1323 of this title to the account" for "aggregate of the outstanding advances from the Treasury to the account pursuant to section 1322(c) of this title."

Subsec. (g). Pub.L. 86-778 redesignated former subsec. (h) as (g).

1959 Amendment. Subsec. (b). Pub.L. 86-346 substituted "on original issue at the issue price" for "on original issue at par."

1958 Amendment. Subsec. (a). Pub.L. 85-927, § 204(a), inserted "or the railroad unemployment insurance administration fund".

Subsec. (e). Pub.L. 85-927, § 204(b), substituted "the railroad unemployment insurance account, and the railroad unemployment insurance administration fund" for "and the railroad unemployment insurance account".

Subsec. (f). Pub.L. 85-927, § 204(c), substituted "railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment" for "fund as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the railroad unemployment insurance account at the time of such payment".

1954 Amendment. Subsec. (a). Act Aug. 5, 1954, § 5(b) substituted "or otherwise deposited in or credited to the Fund or any account therein" for "or deposited pursuant to appropriations to the Federal unemployment account."

Subsec. (b). Act Aug. 5, 1954, § 5(c), added last sentence beginning "Advances to the Federal * * *."

Subsec. (e). Act Aug. 5, 1954, § 5(d), added last sentence beginning "For the purpose of this subsection * * *".

Subsec. (g). Act Aug. 5, 1954, § 5(e), repealed provisions which authorized Secretary of Treasury to make transfers from Federal unemployment account to account of any State in Unemployment Trust Fund.

Subsec. (h). Act Aug. 5, 1954, § 5(f) substituted a new clause (2) in the second sentence and repealed the third sentence: "Any amounts in the Federal unemployment account on April 1, 1952, and any amounts repaid to such account after such date, shall be covered into the general fund of the Treasury."

1950 Amendment. Subsec. (h). Act Aug. 28, 1950 substituted "prior to July 1, 1951" for "prior to July 1, 1949", "on July 1, 1951, and ending on December 31, 1951" for "on July 1, 1949, and ending on December 31, 1949" in clause (2) of the second sentence, and "April 1, 1952" for "April 1, 1950" in the third sentence.

1947 Amendment. Subsec. (h). Act Aug. 6, 1947 amended provisions generally, changed the periods for which excess of tax collections over administrative expenditures could be appropriated to the unemployment account, limited authorized appropriations for the unemployment account to the excess collections for the period ending Dec. 31, 1949, provided for amounts in such account on Apr. 1, 1950, and any repayments to the account after such date be covered into the general fund of the Treasury, and provided for an additional deduction of $18,451,846 from the total amount of taxes collected prior to July 1, 1943.

1944 Amendment. Subsec. (a). Act Oct. 3, 1944, § 401(a) inserted a comma and "or deposited pursuant to appropriations to the Federal unemployment account" immediately following "unemployment insurance account" in the second sentence.

Subsec. (e). Act Oct. 3, 1944, § 401(b) inserted a comma and "the Federal unemployment account" immediately following "a separate book account for each State agency".

Subsecs. (g), (h). Act Oct. 3, 1944, § 401(c), added subsecs. (g) and (h).

1938 Amendment. Subsec. (a). Act June 25, 1938, § 10(e) inserted "or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account".

Subsec. (e). Act June 25, 1938, § 10(f) inserted "and the railroad unemployment insurance account".

Subsec. (f). Act June 25, 1938, § 10(g) added the second sentence.

Effective Date of 1958 Amendment. Amendment of subsecs. (a), (e), and (f) by Pub.L. 85-927 effective Sept. 6, 1958, except as otherwise indicated, see section 207(c) of Pub.L. 85-927, set out as a note under section 351 of Title 45, Railroads.

Effective Date of 1950 Amendment. Section 404(c) of Act Aug. 28, 1950 provided that the amendment of subsec. (h) shall be effective Jan. 1, 1950.

Termination Date. Section 4 of Act Aug. 6, 1947 provided: "Section 603 of the War Mobilization and Reconversion Act of 1944 [former section 1651 note of Appendix to Title 50, War and National Defense] (terminating the provisions of such Act [former sections 1651-1678 of Appendix to Title 50] on June 30, 1947) shall not be applicable in the case of the amendments made by Title IV of such Act [former sections 1666 and 1667 of Appendix to Title 50] to the Social Security Act [sections 1104 and 1321 of this title]."

Transfer of Functions. Functions of the Federal Security Administrator with respect to unemployment compensation and his functions under sections 1600-1611 of Title 26, Internal Revenue Code of 1939, were transferred to the Secretary of Labor by 1949 Reorg.Plan No. 2. See note set out under section 133z-15 of Title 5, Executive Departments and Government Officers and Employees.

Section 1 of 1949 Reorg.Plan. No. 2 also provided that the functions transferred by this section shall be performed by the Secretary of Labor or, subject to his direction and control, by such officers, agencies, and employees of the Department of Labor as he shall designate.

Social Security Board was abolished and its functions transferred to Federal Security Administrator by 1946 Reorg. Plan No. 2. See note under section 902 of this title.

Payments to States. Act Aug. 24, 1937, c. 755, 50 Stat. 754, provided for payments to States of 90 per cent of proceeds of the unemployment tax collected prior to Jan. 31, 1938, where State had enacted an approved unemployment-compensation law during 1937.

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 3, 1944, see 1944 U.S. Code Cong.Service, p. 1310. See, also Act Aug. 6, 1947, 1947 U.S.Code Cong.Service, p. 1641; Act Aug. 28, 1950, 1950 U.S.Code Cong.Service, p. 3287; Pub.L. 85-927, 1958 U.S.Code Cong. and Adm.News, p. 5279; 1959 U.S.Code Cong. and Adm.News, p. 2769; Pub.L. 86-778, 1960 U.S.Code Cong. and Adm.News, p. 3608.

Notes of Decisions

Library references

United States ⇐82.
C.J.S. United States § 122.

1. Constitutionality

Proceeds of excise imposed on employer by former subchapter IX of this chapter when collected and paid into Treasury, were subject to appropriation like public moneys generally, and no presumption could be indulged that they would be misapplied or wasted. Chas. C. Steward Mach. Co. v. Davis, Ala.1937, 57 S.Ct. 883, 301 U.S. 548, 81 L.Ed. 1279, 109 A.L.R. 1293.

This chapter is not a coercion of the states, which remain free to repeal their unemployment compensation laws and withdraw their funds from the federal trust fund. Tatum v. Wheeless, 1938, 178 So. 95, 180 Miss. 800.

2. —— State laws

Provision in this section and Cal.St. 1935, p. 1226, West's Ann.Un.Ins.C. §§ 1527, 1530, permitting deposit of state unemployment funds in federal unemployment trust fund to be invested by Secretary of Treasury in either interest-bearing obligations of United States or obliga-

tions guaranteed as to both principal and interest by United States, was not violative of California Constitution. Gillum v. Johnson, 1936, 63 P.2d 810, 7 Cal.2d 744, 108 A.L.R. 595.

Ky.Acts 1942, House Bill 129, relating to transfer of a certain amount by federal Secretary of the Treasury to the railroad unemployment insurance account out of interest thereafter credited to Kentucky's account in unemployment trust fund is violative of constitutional prohibition. Ky.Const. § 180, against devotion to another purpose of tax levied and collected for one purpose on ground that interest was a "tax", notwithstanding that increased burden might be cast on Kentucky employers by withholding of federal funds from Kentucky for assistance in administration of Ky.Laws 1938, c. 50, § 1 et seq. Kentucky Color & Chemical Co. v. Barnes, 1942, 162 S.W.2d 531, 290 Ky. 681.

3. Deposit, effect of

Fact that state unemployment funds deposited in federal unemployment trust fund must be deposited with national bank does not destroy their character as a deposit within constitutional provision that state moneys may be deposited in any national or state bank within state, since funds are moneys in state's custody and are subject to such deposit within the law. Gillum v. Johnson, 1936, 62 P.2d 1037, 7 Cal.2d 744, 108 A.L.R. 595, rehearing denied 63 P.2d 810, 7 Cal.2d 744, 108 A.L.R. 595.

4. Title to fund

Contributions required by Unemployment Compensation Law, 43 P.S. § 751 et seq., to be paid by employers into Unemployment Compensation Fund, constitute "state taxes" within 53 P.S. 2015.1 et seq., prohibiting school district authorities from levying and collecting taxes on privileges or subjects subject to state tax, as such contributions are taxes imposed for state purposes, that is, for benefit of all citizens of commonwealth entitled thereto, though paid from such fund into this fund of United States Treasury and requisitioned back to state fund when necessary to provide funds for payments of unemployment compensation. Appeal of School Dist. of City of York, 1951, 80 A.2d 803, 367 Pa. 279.

State unemployment funds deposited in federal unemployment trust fund are a continuing appropriation for specific purpose, and Federal Government does not obtain title to money but holds it in trust for state Unemployment Reserves Commission which is bound to administer money in accordance with Cal.St.1935, p. 1226, West's Ann.Un.Ins.C. § 1025 et seq. Gillum v. Johnson, 1936, 62 P.2d 1037, 7 Cal.2d 744, 108 A.L.R. 595, rehearing denied 63 P.2d 810, 7 Cal.2d 744, 108 A.L.R. 595.

5. Presumptions

No presumption could be indulged that proceeds of excise imposed by former subchapter IX of this chapter would be misapplied or wasted. Chas. C. Steward Mach. Co. v. Davis, Ala.1937, 57 S.Ct. 883, 301 U.S. 548, 81 L.Ed. 1279, 109 A.L.R. 1293.

§ 1105. Federal Extended Compensation Account—Establishment; separate book account; appropriations; transfer and repayment of funds

(a) There is established in the Unemployment Trust Fund a Federal extended compensation account. For the purposes provided for in section 1104(e) of this title, such account shall be maintained as a separate book account. There are authorized to be appropriated, without fiscal year limitation, such amounts as may be necessary to make the payments of compensation provided by sections 1400m and 1400r of this title and the reimbursements provided by section 1400n of this title. The amounts so appropriated shall be transferred from time to time to the Federal extended compensation account on the basis of estimates by the Secretary of the Treasury after consultation with the Secretary of Labor of the amounts required to make such

payments and reimbursements. Amounts so transferred shall be repayable advances (without interest), except to the extent that such amounts are used to make the payments of compensation provided by sections 1400m and 1400r of this title to individuals by reason of the exhaustion of their rights to unemployment compensation under sections 1361–1364 and 1366–1371 of this title. Such repayable advances shall be repaid by transfers, from the Federal extended compensation account to the general fund of the Treasury, at such times as the amount in the Federal extended compensation account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose.

Transfers to the Account

(b) The Secretary of the Treasury shall transfer (as of the close of each month in the calendar years 1963 and 1964), from the employment security administration account to the Federal extended compensation account established by subsection (a) of this section, an amount determined by him to be equal to 50 percent (with respect to the calendar year 1963), or ⅔ (with respect to the calendar year 1964), of the amount by which—

(1) transfers to the employment security administration account pursuant to section 1101(b) (2) of this title during such month, exceed

(2) payments during such month from the employment security administration account pursuant to section 1101(b) (3) and (d) of this title.

If for any such month the payments referred to in paragraph (2) exceed the transfers referred to in paragraph (1), proper adjustments shall be made in the amounts subsequently transferred.

Transfers to State accounts; determination and certification by Secretary of Labor

(c) (1) The Secretary of the Treasury shall transfer (as of December 31, 1963), from the Federal extended compensation account to the accounts of the States in the Unemployment Trust Fund, the balance in the Federal extended compensation account as of such date. Such balance shall be determined by deducting from the amount in the account on December 31, 1963, the amount of the outstanding advances made to such account pursuant to subsection (a) of this section.

(2) Each State's share of the balance to be transferred under this subsection—

(A) shall be determined by the Secretary of Labor and certified by him to the Secretary of the Treasury before that date on the basis of reports furnished by the States to the Secretary of Labor before December 1, 1963, and

(B) shall bear the same ratio to the balance in such account as of December 31, 1963, as (i) the amount of wages subject to

contributions under such State's unemployment compensation law during 1961 and 1962 which have been reported to the State before May 1, 1963, bears to (ii) the total of wages subject to contributions under all State unemployment compensation laws during 1961 and 1962 which have been reported to the States before May 1, 1963.

Termination of Account

(d) Except as provided by subsection (c) of this section, no transfer to or from the Federal extended compensation account shall be made after December 31, 1964. Aug. 14, 1935, c. 531, Title IX, § 905, as added Mar. 24, 1961, Pub.L. 87–6, § 13, 75 Stat. 14, and amended May 29, 1963, Pub.L. 88–31, § 2(c), 77 Stat. 51.

Historical Note

1963 Amendment. Subsec. (b). Pub.L. 88-31 inserted "(with respect to the calendar year 1963), or 5/13 (with respect to the calender year 1964),".

Legislative History: For legislative history and purpose of Pub.L. 87–6, see 1961 U.S.Code Cong. and Adm.News, p. 1477. See, also, Pub.L. 88–31, 1963 U.S. Code Cong. and Adm.News, p. 674.

SUBCHAPTER X.—GRANTS TO STATES FOR AID TO THE BLIND

§ 1201. Appropriations

For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support or self-care, there is authorized to be appropriate for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Federal Security Administrator, State plans for aid to the blind. Aug. 14, 1935, c. 531, Title X, § 1001, 49 Stat. 645; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(b), 64 Stat. 558; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 313(a), 70 Stat. 849; July 25, 1962, Pub.L. 87–543, Title I, § 104(c)(3), 76 Stat. 186.

Library references: Social Security and Public Welfare ⇐221; United States ⇐85; C.J.S. Social Security and Public Welfare § 67; C.J.S. United States § 123.

Historical Note

1962 Amendment. Pub.L. 87-543 inserted "to furnish rehabilitation and other services" preceding "to help such individuals" and "or retain capability for" following "attain."

1956 Amendment. Act Aug. 1, 1956 restated the purpose to include assistance to individuals to attain self-support or self-care.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency

were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board" by Act Aug. 28, 1950.

Identical change was effected by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287. See, also, Pub.L. 87-543, 1962 U.S.Code Cong. and Adm.News, p. 1943.

§ 1202. State plans for aid to blind

(a) A State plan for aid to the blind must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness; (5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title or aid to families with dependent children under the State plan approved under section 602 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency shall disregard (A) the first $85 per month of earned income, plus one-half of earned income in excess of $85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan; (9) provide safeguards

which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to the blind; (10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (13) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

In the case of any State (other than Puerto Rico and the Virgin Islands) which did not have on January 1, 1949, a State plan for aid to the blind approved under this subchapter, the Secretary shall approve a plan of such State for aid to the blind for purposes of this subchapter, even though it does not meet the requirements of clause (8) of subsection (a) of this section, if it meets all other requirements of this subchapter for an approved plan for aid to the blind; but payments under section 1203 of this title shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1203 of this title under a plan approved under this section without regard to the provisions of this sentence. Aug. 14, 1935, c. 531, Title X, § 1002, 49 Stat. 645; Aug. 10, 1939, c. 666, Title VII, § 701, 53 Stat. 1397; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 4, § 341(a–e), Pt. 6, § 361(c), (d), 64 Stat. 553, 558; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 313(b), 70 Stat. 849; Sept. 13, 1960, Pub.L. 86–778, Title VII,

§ 710, 74 Stat. 997; July 25, 1962, Pub.L. 87–543, Title I, §§ 104(a)(3)(H), 106(a)(2), 136(a), 154, 76 Stat. 185, 188, 197, 206; Oct. 13, 1964, Pub.L. 88–650, § 5(a), 78 Stat. 1078.

Historical Note

1964 Amendment. Subsec. (a) (8). Pub.L. 88–650 permitted the State agency, for a period not in excess of thirty-six months to disregard such additional amounts of other income and resources.

1962 Amendment. Subsec. (a) (7). Pub. L. 87–543, § 104(a) (3) (H), substituted "aid to families with dependent children" for "aid to dependent children."

Subsec. (a) (8). Pub.L. 87–543, §§ 106 (a) (2), 154, inserted the words ", as well as any expenses reasonably attributable to the earning of any such income", and amended the exception provision by eliminating "either (i) the first $50 per month of earned income, or" following "disregard", redesignating cl. (ii) as subpar. (A) and adding subpar. (B).

Subsec. (b). Pub.L. 87–543, § 136(a), provided for approval of certain plans of States, without an approved plan on Jan. 1, 1949, meeting all but income and resources requirements, and payment of certain expenditures under such plans.

1960 Amendment. Subsec. (a) (8). Pub. L. 86–778, § 710(b), eliminated provision that required the State agency to disregard, alternatively, the first $50 per month of earned income in considering claimant's income and resources in determining need.

Pub.L. 86–778, § 710(a), inserted provision that required the State agency to disregard, alternatively, the first $85 per month of earned income plus one-half of earned income in excess of $85 per month in considering claimant's income and resources in determining need.

1956 Amendment. Subsec. (a) (13). Act Aug. 1, 1956 added cl. (13).

1950 Amendment. Subsec. (a) (4). Act Aug. 28, 1950, § 341(a), substituted "provide for * * * with reasonable promptness" for "provide for granting to any individual, whose claim for aid is denied, an opportunity for a fair hearing before such State agency".

Subsec. (a) (7). Act Aug. 28, 1950, § 341(b), added "or aid to * * * of this title".

Subsec. (a) (8). Act Aug. 28, 1950, § 341(c) (1), (d), added exception clause, and struck out "and" preceding subsec. (a) (9).

Subsec. (a) (9). Act Aug. 28, 1950, § 341(d), substituted a comma for a period at the end thereof.

Subsec. (a) (10)–(12). Act Aug. 28, 1950, § 341(d), added cls. (10)–(12).

1939 Amendment. Subsec. (a) (5). Act Aug. 10, 1939, § 701(a), inserted after methods of administration "(including after January 1, 1940, * * * no authority with respect)" and "proper" before "and efficient operation of the plan".

Subsec. (a) (8), (9). Act Aug. 10, 1939, § 701(b), added cls. (8) and (9).

Effective Date of 1962 Amendment. Amendment of subsec. (a) (8) of this section by section 106 of Pub.L. 87–543 effective July 1, 1963, see section 202(a) of Pub.L. 87–543, set out as a note under section 302 of this title.

Section 154 of Pub.L. 87–543 provided in part that the amendment of the exception provision of subsec. (a) (8) of this section by section 154 shall be effective July 1, 1963.

Effective Date of 1960 Amendment. Section 710(a) of Pub.L. 86–778 provided in part that the amendment of subsec. (a) (8) of this section by section 710(a) of Pub.L. 86–778 shall be effective for the period beginning with the first day of the calendar quarter which begins after Sept. 13, 1960, and ending with the close of June 30, 1962.

Section 710(b) of Pub.L. 86–778 provided in part that the amendment of subsec. (a) (8) of this section by section 710(b) of Pub.L. 86–778 shall be effective July 1, 1962.

Effective Date of 1956 Amendment. Amendment of this section by Act Aug. 1, 1956 as effective July 1, 1957, see section 314 [315] of Act Aug. 1, 1956, set out as a note under section 302 of this title.

Effective Date of 1950 Amendment. Section 341(f) of Act Aug. 28, 1950, provided in part that the amendment of subsec. (a) (4) shall take effect July 1, 1951, and amendments of subsecs. (a) (7) and (a) (9) and the addition of subsecs. (a) (10)–(12) shall become effective as of Oct. 1, 1950.

Subsec. (a) (8) as Effective July 1, 1952. Section 341(c) (2) of Act Aug. 28,

1950, provided that effective July 1, 1952 subsec. (a) (8) is amended to read as follows: "(8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind; except that, in making such determination, the State agency shall disregard the first $50 per month of earned income;".

Effective and Termination Date of 1950 Amendment of Subsec. (a) (8). Section 341(c) (1) of Act Aug. 28, 1950, provided in part that the amendment of subsec. (a) (8) shall be effective for the period beginning Oct. 1, 1950 and ending June 30, 1952.

Subsec. (a) (10) as Effective July 1, 1952. Section 341(e) of Act Aug. 28, 1950, provided that effective July 1, 1952 subsec. (a) (10) is amended to read as follows: "(10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;".

Effective Date of 1939 Amendment. Amendment of subsec. (a) (8), (9), as added by Act Aug. 10, 1939, was made effective July 1, 1941, by section 701(b) of such Act. Amendment of subsec. (a) (5) by section 701(a) of such Act made no special provision regarding its effective date.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board", and "he", "him", or "his" for "it" or "its" wherever appearing by Act Aug. 28, 1950, § 361(c), (d).

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

State Plans in Effect July 25, 1962: Automatic Conformity to Amendments. State plans in effect July 25, 1962 deemed to have been conformed to amendment of subsec. (a) (7) of this section by section 104(a) of Pub.L. 87-543, see section 104 (b) of Pub.L. 87-543, set out as a note under section 601 of this title.

Public Access to State Disbursement Records. Public access to State records of disbursements of funds and payments under this subchapter, see note under section 302 of this title.

Legislative History: For legislative history and purpose of Pub.L. 86-778, see 1960 U.S.Code Cong. and Adm.News, p. 3608. See, also Pub.L. 87-543, 1962 U.S.Code Cong. and Adm.News, p. 1943.

Notes of Decisions

Library references

Social Security and Public Welfare ⇐221.
C.J.S. Social Security and Public Welfare § 67.

1. State laws

West's Ann.Welf. & Inst.C., § 3000 et seq. providing for aid to needy blind was adopted for the purpose of operating in connection with the federal system of such aid, and with a view to obtaining federal assistance in providing such aid. Newbold v. Social Welfare Bd., 1946, 174 P.2d 482, 76 C.A.2d 844.

St.1937, p. 1102, § 3000, relating to the needy blind and providing relief from poverty and for stimulation of efforts for self-support was repealed and St. 1941, pp. 2306, 2312, §§ 3431 and 9, West's Ann.Welf. & Inst.C., § 3000 et seq. relating to the partially self-supporting blind was enacted to secure federal assistance by conforming to requirements of former federal Social Security Board and to retain the state's rehabilitation program by providing a different type of aid for rehabilitation of the blind without federal assistance. Wilkinson v. Board of Sup'rs of Alameda County, 1943, 134 P.2d 921, 57 C.A.2d 345.

2. Municipal welfare policy

Municipality's welfare policy, calling for reduced eligibility for welfare aid, was violative of McKinney's N.Y. Social Welfare Law and this chapter as setting up criteria which had no sanction in law, and its enforcement could be enjoined. State Bd. of Social Welfare v. City of

Newbergh, 1961, 220 N.Y.S.2d 54, 28 Misc. 2d 539.

3. Generally

The actions of Merit System Council, authorized by State pursuant to requirement of this chapter as in upholding State department head's dismissal of employee participating in merit system, are not purely administrative, but quasi judicial, and hence subject to review by courts. Adams v. Pulaski Circuit Court, Third Division, 1957, 298 S.W.2d 322, 227 Ark. 348.

§ 1202a. Repealed. Pub.L. 87-543, Title I, § 136(b), July 25, 1962, 76 Stat. 197

Historical Note

Section, Act Aug. 28, 1950, c. 809, Title III, Pt. 4, § 344(a), 64 Stat. 554, provided, in the case of any State without a plan for aid to the blind approved on Jan. 1, 1949, for approval of the plan of such a State conforming to all requirements except those relating to determination of need and consideration of resources but conditioned payments to the State meeting the excepted requirement.

Effective and Termination Date. Section 136(b) of Pub.L. 87-543 also repealed section 344(b) of Act Aug. 28, 1950, as amended Sept. 1, 1954, c. 1206, Title III, § 302, 68 Stat. 1097; Apr. 25, 1957, Pub. L. 85-26, 71 Stat. 27; Aug. 28, 1958, Pub. L. 85-840, Title V, § 509, 72 Stat. 1051; Sept. 13, 1960, Pub.L. 86-778, Title VII, § 706, 74 Stat. 995, which provided that this section shall become effective Oct. 1, 1950 and terminate June 30, 1964.

§ 1203. Payment to States; computation of amounts

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the blind under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) $^{2}\%_{5}$ of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $35 multiplied by the total number of recipients of aid to the blind for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received aid to the blind in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the blind in the form of medical or any other type of remedial care); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $70

multiplied by the total number of such recipients of aid to the blind for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the blind for such month; and

(3) in the case of any State whose State plan approved under section 1202 of this title meets the requirements of subsection (c) (1) of this section, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) services which are prescribed pursuant to subsection (c) (1) of this section and are provided (in accordance with the next sentence) to applicants for or recipients of aid to the blind to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c) (1) of this section, and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid to the blind, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of aid to the blind, and to individuals requesting such services who (within such period or periods as the Sec-

retary may prescribe) have been or are likely to become applicants for or recipients of such aid; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this subchapter shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(4) in the case of any State whose State plan approved under section 1202 of this title does not meet the requirements of subsection (c) (1) of this section, an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3)

and provided in accordance with the provisions of such paragraph.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the blind furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

(c) (1) In order for a State to qualify for payments under paragraph (3) of subsection (a) of this section, its State plan approved

under section 1202 of this title must provide that the State agency shall make available to applicants for or recipients of aid to the blind at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (3) of subsection (a) of this section until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (3) of subsection (a) of this section but shall instead be made, subject to the other provisions of this subchapter, under paragraph (4) of such subsection. Aug. 14, 1935, c. 531, Title X, § 1003, 49 Stat. 646; Aug. 10, 1939, c. 666, Title VII, § 702, 53 Stat. 1397; 1940 Reorg.Plan No. III, § 1(a) (1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title V, § 503, 60 Stat. 992; June 14, 1948, c. 468, § 3(c), 62 Stat. 439; Aug. 28, 1950, c. 809, Title III, Pt. 4, § 342(a), Pt. 6, § 361(c, d), 64 Stat. 553, 558; July 18, 1952, c. 945, § 8(c), 66 Stat. 779; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 1, 1954, c. 1206, Title III, § 303(a), 68 Stat. 1097; Aug. 1, 1956, c. 836, Title III, §§ 303, 313(c), 343, 70 Stat. 847, 849, 853; Aug. 28, 1958, Pub.L. 85–840, Title V, § 503, 72 Stat. 1049; June 30, 1961, Pub.L. 87–64, Title III, § 303(b), 75 Stat. 143; July 25, 1962, Pub.L. 87–543, Title I, §§ 101(a) (3), (b) (3), 132(b), 76 Stat. 176, 180, 195.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

References in Text. The Vocational Rehabilitation Act, referred to in subsec. (a) (3) (D), (E), is classified to sections 31–42 of Title 29, Labor.

1962 Amendment. Subsec. (a) (1). Pub. L. 87–543, § 132(b), substituted "$29\frac{1}{35}$" and "$35" for "four-fifths" and "$31", respectively, in subpar. (A) and "$70" for "$66" in subpar. (B).

Subsec. (a) (2). Pub.L. 87–543, § 132 (b), substituted "$37.50" for "$35.50."

Subsec. (a) (3). Pub.L. 87–543, § 101 (a) (3), (b) (3) (A), inserted in the opening provisions "whose State plan approved under section 1202 of this title meets the requirements of subsection (c) (1) of this section" following "any State", and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services

to help attain and retain capability for self-support or self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for or recipients of aid to the blind and request such services and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff services of State or local public assistance agencies to applicants for and recipients of aid to the blind to help them attain self-support or self-care.

Subsec. (a) (4). Pub.L. 87-543, § 101 (b) (3) (B), added subsec. (a) (4).

Subsec. (c). Pub.L. 87-543, § 101(b) (3) (C), added subsec. (c).

1961 Amendment. Subsec. (a). Pub.L. 87-64 substituted "$31" for "$30" and "$66" for "$65" in cl. (1), and "$35.50" for "$35" in cl. (2).

1958 Amendment. Subsec. (a). Pub.L. 85-840 increased the payments to the States to four-fifths of the first $30 of the average monthly payment per recipient, including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus the Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased the average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from the provisions which authorize an average monthly payment of $65 and included Guam within the provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956 Amendment. Subsec. (a). Act Aug. 1, 1956, § 303, substituted "during such quarter as aid to the blind in the form of money payments under the State plan" for "during such quarter as aid to the blind under the State plan" in cls. (1) and (2), "who received aid to the blind in the form of money payments for such month" for "who received aid to the blind for such month" in par. (a) of cl. (1), and inserted cl. (4).

Act Aug. 1, 1956, § 313(c), eliminated ", which shall be used exclusively as aid to the blind," following "the Virgin Islands, an amount" in cls. (1) and (2), and substituted "including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of aid to the blind to help them attain self-support or self-care" for "which amount shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose" in cl. (3).

Act Aug. 1, 1956, § 343, substituted "October 1, 1956" for "October 1, 1952", eliminated ", which shall be used exclusively as aid to the blind," following "the Virgin Islands, an amount" in clauses (1) and (2), substituted "$60" for "$55", "the product of $30" for "the product of $25", "Secretary of Health, Education, and Welfare" for "Administrator", and "including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of aid to the blind to help them attain self-support or self-care" for "which amount shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose".

1954 Amendment. Subsec. (b) (1). Act Sept. 1, 1954 substituted "the State's proportionate share" for "one-half."

1952 Amendment. Subsec. (a). Act July 18, 1952 increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.

1950 Amendment. Subsec. (a). Act Aug. 28, 1950, § 342(a), provided a new method of computation of the Federal portion of aid to the blind.

1948 Amendment. Subsec. (a). Act June 14, 1948 substituted "$50" for "$45" and "$20" for "$15."

1946 Amendment. Subsec. (a). Act Aug. 10, 1946, § 503(a), increased the maximum monthly State expenditure to which the

Federal government will contribute from $40 to $45, and increased the Federal contribution for aid to the blind from ½ the State's expenditure to ⅔ such expenditure up to $15 monthly per individual plus ½ the State's expenditure over $15.

Subsec. (b). Act Aug. 10, 1946, § 503(b), substituted "the State's proportionate share" for "one-half" in par. (1).

1939 Amendment. Act Aug. 10, 1939 amended section generally.

Effective Date of 1962 Amendment. Amendment of subsec. (a) (1), (2) of this section by section 132(b) of Pub.L. 87-543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Sept. 30, 1962, see section 202(d) of Pub.L. 87-543, set out as a note under section 303 of this title.

Amendment of subsec. (a) (3) of this section by section 101(a) (3) of Pub.L. 87-543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Aug. 31, 1962, and addition of subsecs. (a) (4) and (c) and amendment of subsec. (a) (3) of this section by section 101(b) (3) (A)-(C) of Pub.L. 87-543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, see section 202(f) of Pub.L. 87-543, set out as a note under section 303 of this title.

Effective Date of 1961 Amendment. Amendment of subsec. (a) of this section by Pub.L. 87-64 applicable only in the case of expenditures made after Sept. 30, 1961, and before July 1, 1962, under a State plan approved under subchapter I, X, or XIV of this chapter, see section 303(e) of Pub.L. 87-64, set out as a note under section 303 of this title.

Effective Date of 1958 Amendment. For effective date of amendment of this section by Pub.L. 85-840, see section 512 of Pub.L. 85-840, set out as a note under section 303 of this title.

Effective and Termination Date of 1956 Amendment. Amendment of subsec. (a) of this section by section 343 of Act Aug. 1, 1956, effective only for the period beginning Oct. 1, 1956, and ending with the close of June 30, 1959, see section 345 of Act Aug. 1, 1956, set out as a note under section 303 of this title.

Effective Date of 1956 Amendment. Amendment of this section by section 303 of Act Aug. 1, 1956, effective July 1, 1957, see section 305 of Act Aug. 1, 1956, set out as a note under section 303 of this title.

Effective and Termination Date of 1952 Amendment. Amendment of subsec. (a) as effective for the period beginning Oct. 1, 1952, and ending Sept. 30, 1954, see note set out under section 303 of this title.

Effective Date of 1950 Amendment. Section 342(b) of Act Aug. 28, 1950 provided that the amendment of subsec. (a) shall take effect Oct. 1, 1950.

Effective Date of 1948 Amendment. Section 3(d) of Act June 14, 1948 provided that the amendment of subsec. (a) of this section by section 3(b) of Act June 14, 1948, shall become effective on Oct. 1, 1948.

Effective and Termination Date of 1946 Amendment. Amendment of section by section 503 of Act Aug. 10, 1946, effective only for the period beginning Oct. 1, 1946, and ending with the close of June 30, 1950, see paraphrase of section 504 of Act Aug. 10, 1946, as amended by Act Aug. 6, 1947, set out as a note under section 303 of this title.

Effective Date of 1939 Amendment. Amendment of section by Act Aug. 10, 1939, was made effective Jan. 1, 1940, by section 702 of Act Aug. 10, 1939.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board", and "he", "him", or "his" for "it" or "its" wherever appearing by Act Aug. 28, 1950, § 361(c), (d).

Identical changes were effective by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

Division of Disbursement and certain other offices and agencies and their functions were consolidated into Fiscal Service of Treasury Department by 1940 Reorg.Plan No. III, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees.

Election of Payments under Combined State Plan Rather than Separate Plans. Payments to States under combined State plan under subchapter XVI of this chapter as precluding payment under State plan conforming to this subchapter, see section 141(b) of Pub.L. 87-543, set out as a note under section 1383 of this title.

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 10, 1946, see 1946 U.S. Code Cong.Service, p. 1510. See, also, Act June 14, 1948, 1948 U.S.Code Cong. Service, p. 1752; Act July 18, 1952, 1952 U.S.Code Cong. and Adm.News, p. 2363; Act Sept. 1, 1954, 1954 U.S.Code Cong. and Adm.News, p. 3710; Pub.L. 85-840, 1958 U.S.Code Cong. and Adm.News, p. 4218; Pub.L. 87-64, 1961 U.S.Code Cong. and Adm.News, p. 1855; Pub.L. 87-543, 1962 U.S.Code Cong. and Adm.News, p. 1943.

Cross References

Navajo and Hopi Indians, additional Federal contributions in connection with rehabilitation program, see section 639 of Title 25, Indians.

§ 1204. Operation of State plans

In the case of any State plan for aid to the blind which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1202 (b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1202 of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State. Aug. 14, 1935, c. 531, Title X, § 1004, 49 Stat. 646; 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(c), (d), 64 Stat. 558; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board", and "he", "him", or "his" for "it" or "its" wherever appearing by Act Aug. 28, 1950.

Identical changes were effected by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

§ 1205. Appropriation

Historical Note

Codification. Section, Act Aug. 14, 1935, c. 531, Title X, § 1005, 49 Stat. 647, made available $30,000 for the fiscal year ending June 30, 1936, for expenses in administering sections 1201–1204 of this title.

§ 1206. "Aid to the blind" defined

For the purposes of this subchapter, the term "aid to the blind" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, blind individuals who are needy, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual (a) who is a patient in an institution for tuberculosis or mental diseases, or (b) who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof. Aug. 14, 1935, c. 531, Title X, § 1006, 49 Stat. 647; Aug. 10, 1939, c. 666, Title VII, § 703, 53 Stat. 1398; Aug. 28, 1950, c. 809, Title III, Pt. 4, § 343(a), 64 Stat. 554; July 25, 1962, Pub.L. 87–543, Title I, § 156(c), 76 Stat. 207.

Library references: Social Security and Public Welfare ⇐221; C.J.S. Social Security and Public Welfare § 67.

Historical Note

1962 Amendment. Pub.L. 87–543 inserted "(if provided in or after the third month before the month in which the recipient makes application for aid)" preceding "medical care."

1950 Amendment. Act Aug. 28, 1950 redefined term "aid to the blind".

1939 Amendment. Act Aug. 10, 1939 redefined term "aid to the blind" to include those individuals who are needy.

Effective Date of 1962 Amendment. Amendment of section by section 156(c) of Pub.L. 87–543 applicable in the case of applications made after Sept. 30, 1962, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, see section 156(c) of Pub.L. 87–543, set out as a note under section 306 of this title.

Effective Date of 1950 Amendment. Section 343(b) of Act Aug. 28, 1950, provides that: "The amendment made by subsection (a) [amendment of this section] shall take effect October 1, 1950, except that the exclusion of money payments to needy individuals described in clause (a) or (b) of section 1006 of the Social Security Act as so amended [clause (a) or (b) of this section] shall, in the case of any of such individuals who are not patients in a public institution, be effective July 1, 1952."

Legislative History: For legislative history and purpose of Pub.L. 87–543, see 1962 U.S.Code Cong. and Adm.News, p. 1943.

SUBCHAPTER XI.—GENERAL PROVISIONS

§ 1301. Definitions

(a) When used in this chapter—

(1) The term "State", except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and when used in subchapters I, IV, V, VII, X, XI, XIV, and XVI of this chapter includes the Virgin Islands and Guam.

(2) The term "United States" when used in a geographical sense means, except where otherwise provided, the States.

(3) The term "person" means an individual, a trust or estate, a partnership or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "Secretary", except when the context otherwise requires, means the Secretary of Health, Education, and Welfare.

(7) The terms "physician" and "medical care" and "hospitalization" include osteopathic practitioners or the services of osteopathic practitioners and hospitals within the scope of their practice as defined by State law.

(8) (A) The "Federal percentage" for any State (other than Puerto Rico, the Virgin Islands, and Guam) shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the square of the per capita income of such State bears to the square of the per capita income of the United States; except that the Federal percentage shall in no case be less than 50 per centum or more than 65 per centum.

(B) The Federal percentage for each State (other than Puerto Rico, the Virgin Islands, and Guam) shall be promulgated by the Secretary between July 1 and August 31 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the eight quarters in the period beginning July 1 next succeeding such promulgation: *Provided*, That the Secretary shall promulgate such percentages as soon as possible after August 28, 1958, which promulgation shall be conclusive for each of the eleven quarters in the period beginning October 1, 1958, and ending with the close of June 30, 1961.

(C) The term "United States" means (but only for purposes of subparagraphs (A) and (B) of this paragraph) the fifty States and the District of Columbia.

(D) Promulgations made before satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska shall prescribe a Federal percentage for Alaska of 50 per centum and, for purposes of such promulgations, Alaska shall not be included as part of the "United States". Promulgations made thereafter but before per capita income data for Alaska for a full three-year period are available from the Department of Commerce shall be based on satisfactory data available therefrom for Alaska for such one full year or, when such data are available for a two-year period, for such two years.

(b) The terms "includes" and "including" when used in a definition contained in this chapter shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this chapter or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this chapter shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this chapter, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child. Aug. 14, 1935, c. 531, Title XI, § 1101, 49 Stat. 647; Aug. 10, 1939, c. 666, Title VIII, § 801, 53 Stat. 1398; Aug. 10, 1946, c. 951, Title IV, § 401(a), 60 Stat. 986; June 14, 1948, c. 468, § 2(a), 62 Stat. 438; Aug. 28, 1950, c. 809, Title IV, § 403 (a) (1), (2), (b), 64 Stat. 559; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 16, 1956, c. 836, Title III, § 333, 70 Stat. 852; Aug. 28, 1958, Pub.L. 85–840, Title V, §§ 505, 506, 72 Stat. 1050, 1051; June 25, 1959, Pub.L. 86–70, § 32(a), (d), 73 Stat. 149; July 12, 1960, Pub.L. 86–624, § 30(a), (d), 74 Stat. 419, 420; Sept. 13, 1960, Pub.L. 86–778, Title V, § 541, 74 Stat. 985; July 25, 1962, Pub.L. 87–543, Title I, § 153, 76 Stat. 206.

Library references: Social Security and Public Welfare ⇨2; C.J.S. Social Security and Public Welfare §§ 2, 3.

Similar Provisions

Internal Revenue Code of 1954, Title 26, §§ 3121(e), 3123, 3306(j), 3307, 7701(a) (1), (3), (8), (9).

Historical Note

1962 Amendment. Subsec. (a) (1). Pub. L. 87-543, § 153(a), included in the enumeration subchapters XI and XVI of this chapter.

Subsec. (a) (2). Pub.L. 87-543, § 153(b), deleted ", the District of Columbia, and the Commonwealth of Puerto Rico" following "the States,".

1960 Amendments. Subsec. (a) (1). Pub.L. 86-778 substituted "The term 'State', except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico" for "The term 'State' includes the District of Columbia", and "includes the Virgin Islands and Guam" for "includes Puerto Rico, the Virgin Islands, and Guam." Pub.L. 86-624, § 30(d) (1), eliminated words "Hawaii, and" preceding "the District of Columbia".

Subsec. (a) (2). Pub.L. 86-778 substituted "means, except where otherwise provided, the States, the District of Columbia, and the Commonwealth of Puerto Rico" for "means the States, and the District of Columbia." Pub.L. 86-624, § 30(d) (2), eliminated ", Hawaii," preceding "and the District of Columbia."

Subsec. (a) (8) (A). Pub.L. 86-624, § 30(a) (1), (2), substituted "per capita income of the United States" for "per capita income of the continental United States (including Alaska)", and eliminated provisions which prescribed the Federal percentage for Hawaii as 50 per centum.

Subsec. (a) (8) (B). Pub.L. 86-624, § 30(a) (1), substituted "United States" for "continental United States (including Alaska)".

Subsec. (a) (8) (C), (D). Pub.L. 86-624, § 30(a) (3), added pars. (C) and (D).

1959 Amendment. Subsec. (a) (1). Pub. L. 86-70, § 32(d) (1), substituted "Hawaii and" for "Alaska, Hawaii, and."

Subsec. (a) (2). Pub.L. 86-70, § 32 (d) (2), eliminated "Alaska," preceding "Hawaii."

Subsec. (a) (8). Pub.L. 86-70, § 32(a), substituted "(including Alaska)" for "(excluding Alaska)" in two instances, and "50 per centum for Hawaii" for "50 per centum for Alaska and Hawaii."

1958 Amendment. Subsec. (a) (1). Pub. L. 85-840, § 506, included Guam within the definition of "State" when used in subchapters I, IV, V, VII, X, and XIV of this chapter.

Subsec. (a) (8). Pub.L. 85-840, § 505, added par. (8).

1956 Amendment. Subsec. (a) (1). Act Aug. 1, 1956, inserted reference to subchapter VII of this chapter.

1950 Amendment. Subsec. (a) (1). Act Aug. 28, 1950, § 403(a) (1), redefined the term "State".

Subsec. (a) (6). Act Aug. 28, 1950, § 403(a) (2), defined "Administrator".

Subsec. (a) (7). Act Aug. 28, 1950, § 403(b), added par. (7).

1948 Amendment. Subsec. (a) (6). Act June 14, 1948 provided for the application of the usual common-law rules in determining whether a person is an employee.

1946 Amendment. Subsec. (a) (1). Act Aug. 10, 1946, omitted exception of section 45b of Title 29 and added the Virgin Islands.

1939 Amendment. Subsec. (a) (1). Act Aug. 10, 1939 redefined the term "State."

Effective Date of 1960 Amendments. Section 541 of Pub.L. 86-778 provided in part that the amendment of subsec. (a) (1) and (2) of this section by Pub.L. 86-778 shall be effective on and after Jan. 1, 1961.

Amendment of subsec. (a) (1), (2) of this section by Pub.L. 86-624 effective on Aug. 21, 1959, see section 47(f) of Pub.L. 86-624, set out as a note under section 645 of Title 20, Education.

Amendment of subsec. (a) (8) (A) by Pub.L. 86-624, § 30(a) (1), which substituted "United States" for "continental United States (including Alaska)", and amendment of subsec. (a) (8) (B), and subsecs. (a) (8) (C), (D), applicable in the case of promulgations or computations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after August 21, 1959, see section 47(a) of Pub.L. 86-624, set out as a note under section 442 of Title 20, Education.

Section 47(b) of Pub.L. 86-624 provided that: "The amendments made by paragraph (2) of section 30(a) [which eliminated provisions in subsec. (a) (8) (A) prescribing the Federal percentage for Hawaii] shall be effective with the beginning of the calendar quarter in which this Act is enacted. The Secretary of Health, Education, and Welfare shall, as soon as possible after enactment of this Act [July 12, 1960], promul-

gate a Federal percentage for Hawaii determined in accordance with the provisions of subparagraph (B) of section 1101(a) (S) of the Social Security Act [subsec. (a) (S) (B) of this section], such promulgation to be effective for the period beginning with the beginning of the calendar quarter in which this Act is enacted and ending with the close of June 30, 1961."

Effective Date of 1959 Amendment. Amendment of subsecs. (a) (1) and (a) (2) of this section by Pub.L. 86-70 as effective on Jan. 3, 1959, see section 47 (d) of Pub.L. 86-70, set out as a note under section 15i of Title 20, Education.

Amendment of subsec. (a) (S) of this section by Pub.L. 86-70 as applicable in the case of promulgations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska, see section 47 (a) of Pub.L. 86-70, set out as a note under section 442 of Title 20, Education.

Effective Date of 1958 Amendment. For effective date of amendments of subsec. (a) (1), (S) by Pub.L. 85-840, see section 512 of Pub.L. 85-840, set out as a note under section 303 of this title.

Effective Date of 1950 Amendment. Section 403(a) (3) of Act Aug. 28, 1950 provided that: "The amendment made by paragraph (1) of this subsection [amendment of subsec. (a) (1) of this section] shall take effect October 1, 1950, and the amendment made by paragraph (2) of this subsection [amendment of subsec. (a) (6) of this section], insofar as it repeals the definition of 'employee', shall be effective only with respect to services performed after 1950."

Section 403(b) of Act Aug. 28, 1950, provided in part that subsec. (a) (7) of this section shall be effective Oct. 1, 1950.

Effective Date of 1946 Amendment. Section 401(a) of Act Aug. 10, 1946 provided in part that the amendment to subsec. (a) (1) of this section shall be effective Jan. 1, 1947.

Effective Date of 1939 Amendment. Amendment of section by Act Aug. 10, 1939, was made effective Jan. 1, 1940, by section 801 of such Act.

Effective Date; Wage Credits. Section 2(b) of Act June 14, 1948, provided that: "The amendment made by subsection (a) [of section 2 of Act June 14, 1948] shall have the same effect as if included in the Social Security Act [this chapter] on August 14, 1935, the date of its enactment, but shall not have the effect of voiding any (1) wage credits reported to the Bureau of Internal Revenue with respect to services performed prior to the enactment of this Act [June 14, 1948] or (2) wage credits with respect to services performed prior to the close of the first calendar quarter which begins after the date of the enactment of this Act [June 14, 1948] in the case of individuals who have attained age sixty-five or who have died, prior to the close of such quarter, and with respect to whom prior to the date of enactment of this Act [June 14, 1948] wage credits were established which would not have been established had the amendment made by subsection (a) been in effect on and after August 14, 1935."

Repeal. The provisions of subsecs. (a) (1), (3), [former] (6), (c) of this section were incorporated into sections 1426 (d)-(f), 1427, 1607(i)-(k), and 1608 of Title 26, I.R.C.1939 by Act Feb. 10, 1939, c. 2, 53 Stat. 1. Section 4 of the Act of Feb. 10, 1939, provided that all laws and parts of laws codified into the I.R.C. 1939, to the extent that they related exclusively to internal revenue, were repealed. See enacting sections preceding section 1 of Title 26, I.R.C.1939.

Provisions of I.R.C.1939 were generally repealed by section 7851 of Title 26, I.R.C.1954 (Act Aug. 16, 1954, c. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C.1954, respecting rules in effect upon enactment of I.R.C.1954. Said repealed sections are now covered by sections 3121(d), (e), 3123, 3306(i), (j), 3307, 7701(a) (1) of Title 26, I.R.C.1954.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

Reports by Federal Security Administrator to Congress; Appropriation. Section 2(c) of Act June 14, 1948, provided that:

"(c) (1) The Federal Security Administrator is directed to estimate and report to the Congress at the earliest practicable date (A) the total amount paid as benefits under title II of the Social

Security Act [subchapter II of this chapter] which would not have been paid had the amendment made by subsection (a) [of section 2 of Act June 14, 1948] been in effect on and after August 14, 1935, and (B) the total amount of such payments which the Administrator estimates will hereafter be paid by virtue of the provisions of subsection (b) [set out as a note under this section].

"(2) There is hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund a sum equal to the aggregate of the amounts reported to the Congress under paragraph (1) [of this note]."

Definition of "Secretary". "Secretary" as used in amendments to this chapter made by Pub.L. 85-840 means the Secretary of Health, Education, and Welfare, see section 702 of Pub.L. 85-840, set out as a note under section 402 of this title.

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 10, 1946, see 1946 U.S.Code Cong.Service, p. 1510. See, also, Act June 14, 1948, 1948 U.S.Code Cong. Service, p. 1752; Pub.L. 85-840, 1958 U.S.Code Cong. and Adm.News, p. 4218; Pub.L. 86-70, 1959 U.S.Code Cong. and Adm.News, p. 1675; Pub.L. 86-624, 1960 U.S.Code Cong. and Adm.News, p. 2963; Pub.L. 86-778, 1960 U.S.Code Cong. and Adm.News, p. 3608; Pub.L. 87-543, 1962 U.S.Code Cong. and Adm.News, p. 1943.

Cross References

Aid to the blind, see section 1206 of this title.
Aid to the permanently and totally disabled, see section 1355 of this title.
Employment security administrative expenses, see section 1101 of this title.
Governor, see section 1324 of this title.
Unemployment administrative expenses, see section 1104(g) of this title.

§ 1301—1. Definition of Administrator

Historical Note

Codification. Section, Act Aug. 10, 1946, c. 951, Title II, § 202, 60 Stat. 981, which was enacted as a part of the Social Security Act Amendments of 1946 and not as a part of the Social Security Act which comprises this chapter, and which defined the term "Administrator" as used in certain sections of this chapter is covered by section 1301 of this title.

§ 1301a. Bureau of Old-Age and Survivors' Insurance employees; travel expenses

Employees of the Bureau of Old-Age and Survivors' Insurance when engaged in the investigation of claims or the furnishing or securing of information concerning claims or wage records under subchapter II of this chapter, may be reimbursed for official travel performed by them in privately owned automobiles within the corporate limits of their official stations at a rate not to exceed 3 cents per mile. June 26, 1940, c. 428, Title II, 54 Stat. 588.

Historical Note

Codification. Section was enacted as a part of the Deficiency Act, 1940, and not as a part of the Social Security Act which comprises this chapter.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, set out as a note under section 623 of Title 5 Executive Departments and Government Officers and Employees. The Fed-

eral Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

Similar Provisions. Similar provisions were contained in Act Aug. 9, 1939, C. 633, Title I, § 1, 53 Stat. 1304.

§ 1302. Rules and regulations

The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter. Aug. 14, 1935, c. 531, Title XI, § 1102, 49 Stat. 647; 1946 Reorg.Plan No. 2, §§ 1, 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg.Plan No. II, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; 1950 Reorg. Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; Aug. 28, 1950, c. 809, Title IV, § 403(c), 64 Stat. 559; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.

Similar Provisions

Internal Revenue Code of 1954, Title 26, § 7805(a), (c).

Historical Note

Codification. Provisions relating to the Secretary of Labor were inserted in view of 1950 Reorg.Plan No. 19, which transferred the Bureau of Employees' Compensation from the Federal Security Agency to the Department of Labor and the functions of the Federal Security Administrator with respect to the Bureau and to employees' compensation, including workmen's compensation, to the Secretary of Labor. See transfer of functions notes below.

Repeal. The provisions of this section were incorporated into sections 1429 and 1609 of Title 26, I.R.C.1939, by Act Feb. 10, 1939, c. 2, 53 Stat. 1. Section 4 of the Act of Feb. 10, 1939, provided that all laws and parts of laws codified into the I.R.C.1939, to the extent that they related exclusively to internal revenue, were repealed. See enacting sections preceding section 1 of Title 26, I.R.C.1939. Provisions of I.R.C.1939, were generally repealed by section 7851 of Title 26, I.R.C.1954 (Act Aug. 16, 1954, c. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C.1954, respecting rules in effect upon enactment of I.R.C.1954. Said repealed sections are now covered by section 7805(a), (c) of Title 26, I.R.C. 1954.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board" by Act Aug. 28, 1950.

The Bureau of Employees' Compensation of the Federal Security Agency, together with its functions, was transferred to the Department of Labor to be administered under the direction and supervision of the Secretary of Labor by section 1 of 1950 Reorg.Plan No. 19, set out as a note under section 133z—15 of Title 5, Executive Departments and Government Officers and Employees.

"Federal Security Administrator" was substituted for "Secretary of Labor" and "Social Security Board" by 1946 Reorg. Plan No. 2. See note under section 902 of this title.

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287.

Notes of Decisions

Library references

Social Security and Public Welfare ⇐6.
C.J.S. Social Security and Public Welfare § 10.

1. Administrative rulings

Administrative interpretation of this chapter is entitled to great weight, but is not controlling. Kandelin v. Social Security Board, C.C.A.N.Y.1943, 136 F.2d 327, 147 A.L.R. 596.

2. Constructive payment

Congress, by enactment of this section expressly recognizing regulation of former Social Security Board construing wages as including wages constructively paid, must be deemed to have placed its approval thereon and to have made such construction part of this chapter itself. Emlen v. Social Sec. Bd., C.C.A. Pa.1945, 148 F.2d 927.

Salary credited to account of sole stockholder who could draw checks on corporation's bank account, but did not draw salary during certain quarters preceding death because withdrawal would have left other creditors of corporation unpaid, was available to stockholder and subject to his disposition without "substantial limitation or restriction" so as to be considered "constructively paid" within meaning of former Social Security Board regulation, in determining whether stockholder was insured at his death. Id.

§ 1303. Separability of provisions

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby. Aug. 14, 1935, c. 531, Title XI, § 1103, 49 Stat. 648.

Notes of Decisions

Library references

Statutes ⇐64(2).
C.J.S. Statutes § 96 et seq.

1. Separate consideration

The various subchapters of this chapter deal with a number of subject matters that might have been made separate acts and in considering their constitutionality it is not necessary to consider the chapter as a whole. Chas. C. Steward Mach. Co. v. Davis, C.C.A.Ala.1937, 89 F.2d 207, affirmed 57 S.Ct. 883, 301 U.S. 548, 81 L.Ed. 1279, 109 A.L.R. 1293.

In view of this section, if section 401 of this title providing for expenditure of funds were declared invalid, such invalidity would not affect former section 1004 of this title, now section 3111 of Title 26, I.R.C.1954, imposing taxes on employers with respect to having individuals in their employ. Davis v. Edison Electric Illuminating Co. of Boston, D.C. Mass.1937, 18 F.Supp. 1, reversed 89 F. 2d 393, reversed 57 S.Ct. 904, 301 U.S. 619, 672, 81 L.Ed. 1307, 109 A.L.R. 1319.

2. Injunction

In view of this section, tax imposed on employers with respect to having individuals in their employ was not so clearly a part of a wholly unconstitutional and void plan as to authorize an injunction against its enforcement contrary to former section 3653 of Title 26 (I.R.C. 1939, now section 7421 of Title 26, I.R.C. 1954), prohibiting injunction. Beeland Wholesale Co. v. Davis, C.C.A.Ala.1937, 88 F.2d 447. See, also, Alpha Portland Cement Co. v. Davis, 1937, 88 F.2d 449.

§ 1304. Reservation of right to amend or repeal

The right to alter, amend, or repeal any provision of this chapter is reserved to the Congress. Aug. 14, 1935, c. 531, Title XI, § 1104, 49 Stat. 648.

Notes of Decisions

Generally 1
Vested rights 2

Library references

Social Security and Public Welfare ⇐3.
C.J.S. Social Security and Public Welfare § 3.

1. Generally

Congress has the power to revise or alter payments to recipients of old age insurance benefits under this chapter. Nestor v. Folsom, D.C.D.C.1959, 169 F. Supp. 922, reversed on other grounds 80 S.Ct. 1367, 363 U.S. 603, 4 L.Ed.2d 1435, rehearing denied 81 S.Ct. 29, 364 U.S. 854, 5 L.Ed.2d 77.

2. Vested rights

The amendment of 1954 to section 403 of this title as construed to mean that earnings from practice of law during 1955 fell within deductions to be taken against payments made to attorney in 1955 is not unconstitutional as applied to attorney on theory that it deprived him of social security benefits in which he obtained a vested right at time he received award of such benefits in 1954 since attorney had not acquired a vested right in view of authority of this section reserving to Congress the right to amend and repeal provisions of this chapter. Price v. Folsom, D.C.N.J.1958, 168 F.Supp. 392, affirmed 280 F.2d 956, certiorari denied 81 S.Ct. 698, 365 U.S. 817, 5 L.Ed.2d 695.

§ 1305. Short title of chapter

This chapter may be cited as the "Social Security Act." Aug. 14, 1935, c. 531, Title XI, § 1105, 49 Stat. 648.

Library references: Social Security and Public Welfare ⇐1; C.J.S. Social Security and Public Welfare §§ 1, 2.

§ 1306. Disclosure of information in possession of Department of Health, Education, and Welfare or Department of Labor; compliance with requests for information and services

(a) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under Title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of Title 26, or under regulations made under authority thereof, which have been transmitted to the Secretary of Health, Education, and Welfare or to the Secretary of Labor, as the case may be, by the Commissioner of Internal Revenue, or of any file, record, report or other paper, or any information, obtained at any time by the Secretary of Health, Education, and Welfare, or the Secretary of Labor, or by any officer or employee of the Department of Health, Education, and Welfare or the Department of Labor in the course of discharging their respective duties under this chapter, and no disclosure of any such file, record, report, or other paper, or information,

obtained at any time by any person from the Secretary of Health, Education, and Welfare or the Secretary of Labor, as the case may be, or from any officer or employee of the Department of Health, Education, and Welfare or the Department of Labor shall be made except as the Secretary of Health, Education, and Welfare or the Secretary of Labor, as the case may be, may by regulations prescribe. Any person who shall violate any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the Secretary of Health, Education, and Welfare or the Secretary of Labor, as the case may be, to avoid undue interference with their respective functions under this chapter, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the Secretary of Health, Education, and Welfare or the Secretary of Labor, as the case may be. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the Secretary of Health, Education, and Welfare or the Secretary of Labor, as the case may be, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund) for the unit or units of the Department of Health, Education, and Welfare or the Department of Labor, as the case may be, which furnished the information or services. Aug. 14, 1935, c. 531, Title XI, § 1106, as added Aug. 10, 1939, c. 666, Title VIII, § 802, 53 Stat. 1398, and amended 1946 Reorg. Plan No. II, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg.Plan No. II, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; 1950 Reorg.Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; Aug. 28, 1950, c. 809, Title IV, § 403(d), 64 Stat. 559; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 28, 1958, Pub.L. 85–840, Title VII, § 701, 72 Stat. 1055.

Historical Note

References in Text. Title VIII of the Social Security Act, referred to in subsec. (a), was formerly classified to sections 1001–1011 of this title. For disposition of those sections, see Codification Note thereunder.

Subchapter E of chapter 1 and subchapter A of chapter 9 of Title 26, referred to in subsec. (a), were references to provisions classified to sections 480–482 and 1400–1432, respectively of the Internal Revenue Code, 1939. Said provisions were repealed by section 7851 of Title 26, I.R.C.1954. For provision deeming a reference in other laws to a provision of I.R.C.1939, also as a reference

to corresponding provision of I.R.C. 1954, see section 7852(b) of said Title 26. For disposition of said repealed provisions in Title 26, I.R.C.1954, see Distribution Tables.

Codification. Provisions relating to the Department of Labor and the Secretary of Labor were inserted in view of 1950 Reorg.Plan No. 19, which transferred the Bureau of Employees' Compensation from the Federal Security Agency to the Department of Labor and the functions of the Federal Security Administrator with respect to the Bureau and to employees' compensation, including workmen's compensation, to the Secretary of Labor. See transfer of functions notes below.

1958 Amendment. Subsec. (b). Pub.L. 85-840 authorized compliance with requests for services if the agency, person, or organization making the request agrees to pay for the services.

1950 Amendment. Act Aug. 28, 1950 designated existing provisions as subsec. (a), substituted "under subchapter E of chapter 1 or subchapter A of chapter 9 of Title 26" for "the Federal Insurance Contributions Act", reflected the transfer of functions from the Social Security Board to the Federal Security Administrator and the Federal Security Agency, and added subsec. (b).

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

The Bureau of Employees' Compensation of the Federal Security Agency, together with its functions, was transferred to the Department of Labor to be administered under the direction and supervision of the Secretary of Labor by section 1 of 1950 Reorg.Plan No. 19, set out as a note under section 133z—15 of Title 5, Executive Departments and Government Officers and Employees.

The Bureau of Employment Security of the Federal Security Agency, together with its functions, was transferred to the Department of Labor, to be administered by the Secretary of Labor, by section 1 of 1949 Reorg.Plan No. II, set out as a note under section 133z—15 of Title 5.

"Administrator" was substituted for "Board" by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

Definition of "Secretary". "Secretary" as used in amendments to this chapter made by Pub.L. 85-840 means the Secretary of Health, Education, and Welfare, see section 702 of Pub.L. 85-840, set out as a note under section 402 of this title.

Legislative History: For legislative history and purpose of Pub.L. 85-840, see 1958, U.S.Code Cong. and Adm.News, p. 4218.

Cross References

Offenses classified, see section 1 of Title 18, Crimes and Criminal Procedure.

Notes of Decisions

Library references

Social Security and Public Welfare ⇐5, 8.
C.J.S. Social Security and Public Welfare §§ 9, 13.

1. State court action

Field representative of Department of Health, Education and Welfare, Social Security Administration, was supported by this section in his refusal to disclose whereabouts of individual whose social security account was still "active", and was not guilty of contumacious conduct when, acting in good faith and in accordance with instructions from his superiors, he respectfully refused to divulge such information in state court action brought by wife of individual in question to have him declared a presumed decedent. In re Mengel, D.C.Pa.1962, 201 F.Supp. 687.

2. Privileged statements

Libelous statement by United States Department of Health, Education and Welfare claims representative in confidential report for internal agency use, that plaintiff, who had presented to representative the claim of plaintiff's wife for social security benefits based on em-

ployment by corporations owned and operated by plaintiff, that plaintiff had been disbarred, was absolutely privileged. Poss v. Lieberman, C.A.N.Y.1962, 299 F.2d 358, certiorari denied 82 S.Ct. 1585, 370 U.S. 944, 8 L.Ed.2d 810.

§ 1307. Penalty for fraud

(a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this chapter, subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of Title 26, or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Secretary that he is such individual, or the wife, husband, widow, widower, former wife divorced, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, former wife divorced, child, or parent of such individual, or (2) falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both. Aug. 14, 1935, c. 531, Title XI, § 1107, as added Aug. 10, 1939, c. 666, Title VIII, § 802, 53 Stat. 1398, and amended 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title IV, § 403(e, f), 64 Stat. 560; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.

Historical Note

References in Text. Subchapter E of chapter 1 and subchapter A, C, or E of chapter 9 of Title 26, referred to in subsec. (a), were references to provisions classified to sections 480–482, 1400–1432, 1600–1611, and 1630–1636, respectively of the Internal Revenue Code, 1939. Said provisions were repealed by section 7851 of Title 26, I.R.C.1954. For provision deeming a reference in other laws to a provision of I.R.C.1939, also as a reference to corresponding provision of I.R.C. 1954, see section 7852(b) of said Title 26. For disposition of said repealed provisions in Title 26, I.R.C.1954, see Distribution Tables.

1950 Amendment. Subsec. (a). Act Aug. 28, 1950, § 403(e), substituted "subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of Title 26" for "the Federal Insurance Contributions Act, or the Federal Unemployment Tax Act".

Subsec. (b). Act Aug. 28, 1950, § 403(b), substituted "Administrator" for "Board" and "wife, husband, widow, widower, former wife divorced, child or parent" for "wife, parent, or child" wherever appearing.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal

Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

"Administrator" was substituted for "Board" by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

Cross References

Offenses classified, see section 1 of Title 18, Crimes and Criminal Procedure.

Notes of Decisions

Library references

Fraud ⇐68.
C.J.S. Fraud § 154.

1. Family court hearing, certification

Where hearing was had on husband's application for decrease in support awarded wife and on wife's cross-application for an increase and a letter from former Federal Security Agency addressed to the wife was offered in evidence by the husband and wife claimed that letter was addressed to an address which was that of the husband allegedly in violation of subsection (b) of this section, an official of the federal agency was entitled to a certified copy of the letter and minutes of the hearing in order to determine whether the husband had committed a criminal act. Fontana v. Fontana, 1949, 87 N.Y.S.2d 903, 194 Misc. 1042.

§ 1308. Limitation on payments to Puerto Rico, the Virgin Islands, and Guam

The total amount certified by the Secretary of Health, Education, and Welfare under subchapters I (other than section 303(a) (3) thereof), IV, X, XIV, and XVI (other than section 1383(a) (3) thereof) of this chapter for payment to Puerto Rico with respect to any fiscal year shall not exceed $9,800,000, of which $625,000 may be used only for payment certified with respect to section 303(a) (2) (B) or 1383(a) (2) (B) of this title; the total amount certified by the Secretary under such subchapters for payments to the Virgin Islands with respect to any fiscal year shall not exceed $330,000, of which $18,750 may be used only for payments certified with respect to section 303 (a) (2) (B) or 1383(a) (2) (B) of this title; and the total amount certified by the Secretary under such subchapters for payment to Guam with respect to any fiscal year shall not exceed $450,000, of which $25,000 may be used only for payments certified with respect to section 303(a) (2) (B) or 1383(a) (2) (B) of this title. Notwithstanding the provisions of sections 702(a) (2), 712(a) (2), 722(a), and 727(a) of this title, and until such time as the Congress may by appropriation or other law otherwise provide, the Secretary shall, in lieu of the initial (or, in the case of section 727(a) of this title, the minimum) allotment specified in such sections, allot such smaller amounts to Guam as he may deem appropriate. Aug. 14, 1935, c. 531, Title XI, § 1108, as added Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(g), 64 Stat. 558, and amended 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 351(c), 70 Stat. 855; Aug. 28, 1958, Pub.L. 85-840, Title V, §§ 507, 508, 72 Stat. 1051; Sept. 13, 1960, Pub.L. 86-778, Title VI, § 602, 74 Stat. 992; July 25, 1962, Pub.L. 87-543, Title I, § 151, 76 Stat. 206.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1962 Amendment. Pub.L. 87-543 substituted "$9,800,000", "$330,000", "$450,000", and "initial (or, in the case of section 727 (a) of this title, the minimum) allotment" for "$9,500,000", "$320,000", "$430,000" and "$60,000, $60,000, and $60,000, respectively,", respectively, and inserted references to subchapter "XVI (other than section 1383(a) (3) thereof)" of this chapter, section 1383(a) (2) in three instances and section 727(a) following section 722(a).

1961 Amendments. Pub.L. 87-64, Title III, § 303(d), June 30, 1961, 75 Stat. 143, substituted "$9,500,000", "$320,000", and "$430,000" for $9,425,000", "$318,750", and "$425,000", respectively. See Repeals note hereunder.

Pub.L. 87-31, § 6, May 8, 1961, 75 Stat. 78 increased the grant to Puerto Rico for fiscal year ending June 30, 1961 from $9,000,000 to $9,075,000 and for fiscal year ending June 30, 1962 to $9,425,000; the grants to Virgin Islands and Guam from $315,000 and $420,000 to $318,750 and $425,000, respectively; and payments under section 303(a) (2) (B) of this title to Puerto Rico, Virgin Islands and Guam from $500,000, $15,000 and $20,000 to $625,000, $18,750 and $25,000, respectively. See, also, Limitation on Payments note hereunder.

1960 Amendment. Pub.L. 86-778 substituted "$9,000,000, of which $500,000 may be used only for payments certified with respect to section 303(a) (2) (B) of this title" for "$8,500,000", "$315,000, of which $15,000 may be used only for payments certified in respect to section 303(a) (2) (B) of this title" for "$300,000", "$420,000, of which $20,000 may be used only for payments certified in respect to section 303(a) (2) (B) of this title" for "$400,000", and "subchapters I (other than section 303(a) (3) thereof)" for "subchapters I."

1958 Amendment. Section amended by Pub.L. 85-840, §§ 507, 508. Section 507(a) substituted "$8,500,000" for "$5,312,500" and "$300,000" for "$200,000", and limited the total amount certified for payment to Guam with respect to any fiscal year to not more than $400,000. Section 507(b) amended catchline to include Guam. Section 508 inserted provisions requiring the Secretary, in lieu of the allotments specified in sections 702(a) (2), 712(a) (2) and 722(a) of this title, to allot such smaller amounts as he may deem appropriate to Guam, notwithstanding the provisions of such sections and until such time as the Congress may by appropriation or other law otherwise provide.

1956 Amendment. Act Aug. 1, 1956 substituted "$5,312,500" for "$4,250,000", and "$200,000" for "$160,000".

Effective Date of 1962 Amendment. Section 151 of Pub.L. 87-543 provided in part that the amendment of this section by Pub.L. 87-543 shall be effective for fiscal years ending after June 30, 1962.

Effective Date of 1961 Amendments. Section 132(d) of Pub.L. 87-543 repealed section 303(d) of Pub.L. 87-64, Title III, June 30, 1961, 75 Stat. 143, which had provided that the amendment of this section by section 303(d) of Pub.L. 87-64 shall be effective only for fiscal year ending June 30, 1962, and section 6 of Pub.L. 87-31, May 8, 1961, 75 Stat. 78, which had provided that the amendment of this section by section 6(b) of Pub.L. 87-31 shall be effective for fiscal years ending after June 30, 1961. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub.L. 87-543, set out as a note under section 722 of this title.

Effective Date of 1960 Amendment. Amendment of section by Pub.L. 86-778 effective with respect to fiscal years ending after 1960, see section 604 of Pub.L. 86-778, set out as a note under section 301 of this title.

Effective Date of 1958 Amendment. For effective date of amendments of this section made by sections 507 and 508 of Pub.L. 85-840, see section 512 of Pub.L. 85-840, set out as a note under section 303 of this title.

Effective Date of 1956 Amendment. Amendment of this section by Act Aug. 1, 1956 effective with respect to the fiscal year ending June 30, 1957, and all succeeding fiscal years, see section 351(d) of such Act Aug. 1, 1956, set out as a note under section 603 of this title.

Repeals; Effective Date. Section 132(d) of Pub.L. 87-543 repealed section 6 of Pub.L. 87-31, May 8, 1961, 75 Stat. 78 and section 303(d) of Pub.L. 87-64, Title III, June 30, 1961, 75 Stat. 143, formerly credited to this section. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87-543, set out as a note under section 722 of this title.

Limitation on Payments; Effective Date. Section 132(d) of Pub.L. 87-543 repealed

section 6(a) of Pub.L. 87–31, May 8, 1961, 75 Stat. 78, which had limited payments to Puerto Rico not to exceed $9,075,000 for fiscal year ending June 30, 1961; $9,425,000 for fiscal year ending June 30, 1962; and $9,125,000 for fiscal years ending after June 30, 1962. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub.L. 87–543, set out as a note under section 722 of this title.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5, of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

Definition of "Secretary". "Secretary" as used in amendments to this chapter made by Pub.L. 85–840 means the Secretary of Health, Education, and Welfare, see section 702 of Pub.L. 85–840, set out as a note under section 402 of this title.

Legislative History: For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287. See, also, Pub.L. 85–840, 1958 U.S. Code Cong. and Adm.News, p. 4218; Pub. L. 86–778, 1960 U.S.Code Cong. and Adm. News, p. 3608; Pub.L. 87–31, 1961 U.S. Code Cong. and Adm.News, p. 4218; Pub. L. 87–64, 1961 U.S.Code Cong. and Adm. News, p. 1885; Pub.L. 87–543, 1962 U.S. Code Cong. and Adm.News, p. 1943.

§ 1309. Earned income of blind recipients

Notwithstanding the provisions of sections 302(a) (10) (A), 602 (a) (7), 1202(a) (8), 1352(a) (8), and 1382(a) (14) of this title, a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter may until June 30, 1954, and thereafter shall provide that where earned income has been disregarded in determining the need of an individual receiving aid to the blind under a State plan approved under subchapter X of this chapter, the earned income so disregarded (but not in excess of the amount specified in section 1202(a) (8) of this title) shall not be taken into consideration in determining the need of any other individual for assistance under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter. Aug. 14, 1935, c. 531, Title XI, § 1109, as added July 18, 1952, c. 945, § 7, 66 Stat. 778, and amended July 25, 1962, Pub.L. 87–543, Title I, § 141(c), 76 Stat. 205.

Library references: Social Security and Public Welfare ⇐221; C.J.S. Social Security and Public Welfare § 34.

Historical Note

1962 Amendment. Pub.L. 87–543 substituted reference to section 302(a) (10) (A) for 302(a) (7) and inserted references to section 1382(a) (14) and subchapter XVI.

Legislative History: For legislative history and purpose of Act July 18, 1952, see 1952 U.S.Code Cong. and Adm.News, p. 2363. See, also, Pub.L. 87–543, 1962 U.S. Code Cong. and Adm.News, p. 1943.

§ 1310. Cooperative research or demonstration projects

(a) There are authorized to be appropriated for the fiscal year ending June 30, 1957, $5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (1) making grants to States and public and other nonprofit organizations and agencies

for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under this chapter and programs related thereto, and (2) making contracts or jointly financed cooperative arrangements with States and public and other nonprofit organizations and agencies for the conduct of research or demonstration projects relating to such matters.

(b) No contract or jointly financed cooperative arrangement shall be entered into, and no grant shall be made, under subsection (a) of this section, until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed projects as to soundness of their design, the possibilities of securing productive results, the adequacy of resources to conduct the proposed research or demonstrations, and their relationship to other similar research or demonstrations already completed or in process.

(c) Grants and payments under contracts or cooperative arrangements under subsection (a) of this section may be made either in advance or by way of reimbursement, as may be determined by the Secretary; and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purposes of this section. Aug. 14, 1935, c. 531, Title XI, § 1110, as added Aug. 1, 1956, c. 836, Title III, § 331, 70 Stat. 850.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

Definition of "Secretary". "Secretary" as used in this section means the Secretary of Health, Education, and Welfare, see section 119 of Act Aug. 1, 1956, set out as a note under section 416 of this title.

§ 1311. Public assistance payments to legal representatives

For purposes of subchapters I, IV, X, XIV, and XVI of this chapter, payments on behalf of an individual, made to another person who has been judicially appointed, under the law of the State in which such individual resides, as legal representative of such individual for the purpose of receiving and managing such payments (whether or not he is such individual's legal representative for other purposes), shall be regarded as money payments to such individual. Aug. 14, 1935, c. 531, Title XI, § 1111, as added Aug. 28, 1958, Pub.L. 85–840, Title V, § 511(a), 72 Stat. 1051, and amended July 25, 1962, Pub.L. 87–543, Title I, § 141(d), 76 Stat. 205.

Historical Note

1962 Amendment. Pub.L. 87–543 inserted reference to subchapter XVI.

Effective Date. Section 511(b) of Pub. L. 85–840 provided that: "The amendment made by subsection (a) [adding this section] shall be applicable in the case of payments to legal representatives by any State made after June 30, 1958;

and to such payments by any State made after December 31, 1955, and prior to July 1, 1958, if certifications for payment to such State have been made by the Secretary of Health, Education, and Welfare with respect thereto, or such State has presented to the Secretary a claim (and such other data as the Secretary may require) with respect thereto, prior to July 1, 1959."

Legislative History: For legislative history and purpose of Pub.L. 85-840, see 1958 U.S.Code Cong. and Adm.News, p. 4218. See, also, Pub.L. 87-543, 1962 U.S. Code Cong. and Adm.News, p. 1943.

§ 1312. Medical care guides and reports for public assistance and medical assistance for the aged

In order to assist the States to extend the scope and content, and improve the quality, of medical care and medical services for which payments are made to or on behalf of needy and low-income individuals under this chapter and in order to promote better public understanding about medical care and medical assistance for needy and low-income individuals, the Secretary shall develop and revise from time to time guides or recommended standards as to the level, content, and quality of medical care and medical services for the use of the States in evaluating and improving their public assistance medical care programs and their programs of medical assistance for the aged; shall secure periodic reports from the States on items included in, and the quantity of, medical care and medical services for which expenditures under such programs are made; and shall from time to time publish data secured from these reports and other information necessary to carry out the purposes of this section. Aug. 14, 1935, c. 531, Title XI, § 1112, as added Sept. 13, 1960, Pub.L. 86-778, Title VII, § 705, 74 Stat. 995.

Library references: Social Security and Public Welfare ⇐5; C.J.S. Social Security and Public Welfare § 9.

Historical Note

Legislative History: For legislative history and purpose of Pub.L. 86-778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

§ 1313. Assistance for United States citizens returned from foreign countries—Authorization; reimbursement; utilization of facilities of public or private agencies and organizations

(a) (1) The Secretary is authorized to provide temporary assistance to citizens of the United States and to dependents of citizens of the United States, if they (A) are identified by the Department of State as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States or the illness of such citizen or any of his dependents or because of war, threat of war, invasion, or similar crisis, and (B) are without available resources.

(2) Except in such cases or classes of cases as are set forth in regulations of the Secretary, provision shall be made for reimburse-

ment to the United States by the recipients of the temporary assistance to cover the cost thereof.

(3) The Secretary may provide assistance under paragraph (1) directly or through utilization of the services and facilities of appropriate public or private agencies and organizations, in accordance with agreements providing for payment, in advance or by way of reimbursement, as may be determined by the Secretary, of the cost thereof. Such cost shall be determined by such statistical, sampling, or other method as may be provided in the agreement.

Plans and arrangements for assistance; consultations

(b) The Secretary is authorized to develop plans and make arrangements for provision of temporary assistance within the United States to individuals specified in subsection (a) (1) of this section. Such plans shall be developed and such arrangements shall be made after consultation with the Secretary of State, the Attorney General, and the Secretary of Defense. To the extent feasible, assistance provided under subsection (a) of this section shall be provided in accordance with the plans developed pursuant to this subsection, as modified from time to time by the Secretary.

Definition of temporary assistance

(c) For purposes of this section, the term "temporary assistance" means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health or welfare of individuals (including guidance, counseling, and other welfare services) furnished to them within the United States upon their arrival in the United States and for such period after their arrival as may be provided in regulations of the Secretary.

Termination date

(d) No temporary assistance may be provided under this section after June 30, 1967. Aug. 14, 1935, c. 531, Title XI, § 1113, as added June 30, 1961, Pub.L. 87–64, Title III, § 302, 75 Stat. 142, and amended July 25, 1962, Pub.L. 87–543, Title I, § 133, 76 Stat. 196; June 30, 1964, Pub.L. 88–347, 78 Stat. 236.

Library references: Social Security and Public Welfare ⇐5; C.J.S. Social Security and Public Welfare § 9.

Historical Note

1964 Amendment. Subsec. (d). Pub.L. 88–347 extended termination date from June 30, 1964 to June 30, 1967.

1962 Amendment. Subsec. (d). Pub.L. 87–543 extended termination date from June 30, 1962 to June 30, 1964.

Legislative History: For legislative history and purpose of Pub.L. 87–64, see 1961 U.S.Code Cong. and Adm.News, p. 1855. See, also, Pub.L. 87–543, 1962 U.S. Code Cong. and Adm.News, p. 1943; Pub. L. 88–347, 1964 U.S.Code Cong. and Adm. News.

§ 1314. Public advisory groups—Advisory Council on Public Welfare; appointment and functions of initial Council

(a) The Secretary shall, during 1964, appoint an Advisory Council on Public Welfare for the purpose of reviewing the administration of the public assistance and child welfare services programs for which funds are appropriated pursuant to this chapter and making recommendations for improvement of such administration, and reviewing the status of and making recommendations with respect to the public assistance programs for which funds are so appropriated, especially in relation to the old-age, survivors, and disability insurance program, with respect to the fiscal capacities of the States and the Federal Government, and with respect to any other matters bearing on the amount and proportion of the Federal and State shares in the public assistance and child welfare services programs.

Membership and representation of interests on initial Council

(b) The Council shall be appointed by the Secretary without regard to the civil-service laws and shall consist of twelve persons who shall, to the extent possible, be representatives of employers and employees in equal numbers, representatives of State or Federal agencies concerned with the administration or financing of the public assistance and child welfare services programs, representatives of nonprofit private organizations concerned with social welfare programs, other persons with special knowledge, experience, or qualifications with respect to such programs, and members of the public.

Technical and other assistance for initial Council; availability of data

(c) The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Health, Education, and Welfare as it may require to carry out such functions.

Termination of initial Council's existence on submission of report

(d) The Council shall make a report of its findings and recommendations (including recommendations for changes in the provisions of this chapter) to the Secretary, such report to be submitted not later than July 1, 1966, after which date such Council shall cease to exist.

Succeeding Councils; appointment; functions; membership; representation of interests; assistance and data; termination

(e) The Secretary shall also from time to time thereafter appoint an Advisory Council on Public Welfare, with the same functions and constituted in the same manner as prescribed for the Advisory Council in the preceding subsections of this section. Each Council so appointed shall report its findings and recommendations, as pre-

scribed in subsection (d) of this section, not later than July 1 of the second year after the year in which it is appointed, after which date such Council shall cease to exist.

Advisory committees; functions; reports by Secretary

(f) The Secretary may also appoint, without regard to the civil-service laws, such advisory committees as he may deem advisable to advise and consult with him in carrying out any of his functions under this chapter. The Secretary shall report to the Congress annually on the number of such committees and on the membership and activities of each such committee.

Compensation and travel expenses

(g) Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $75 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 73b—2 of Title 5 for persons in Government service employed intermittently.

Exemption from conflict-of-interest laws of members of Council or advisory committees; exceptions

(h) (1) Any member of the Council or any advisory committee appointed under this chapter, who is not a regular full-time employee of the United States, is exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914 of Title 18, and section 99 of Title 5, except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

Aug. 14, 1935, c. 531, Title XI, § 1114, as added July 25, 1962, Pub.L. 87–543, Title I, § 121, 76 Stat. 190.

Library references: Social Security and Public Welfare ⇐5; C.J.S. Social Security and Public Welfare § 9.

Historical Note

References in Text. The civil-service laws, referred to in subsecs. (b) and (f), are classified generally to Title 5, Executive Departments and Government Officers and Employees.

Legislative History: For legislative history and purpose of Pub.L. 87–543, see 1962 U.S.Code Cong. and Adm.News, p. 1943.

§ 1315. Demonstration projects; waiver of State plan requirements; costs regarded as State plan expenditures; availability of appropriations

In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of subchapter I, IV, X, XIV, or XVI of this chapter in a State or States—

(a) the Secretary may waive compliance with any of the requirements of section 302, 602, 1202, 1352, or 1382 of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(b) costs of such project which would not otherwise be included as expenditures under section 303, 603, 1203, 1353, or 1383 of this title, as the case may be, and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such subchapter, or for administration of such State plan or plans, as may be appropriate.

In addition, not to exceed $2,000,000 of the aggregate amount appropriated for payments to States under such subchapters for any fiscal year ending prior to July 1, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such subchapters and is not included as part of the cost of projects for purposes of section 1310 of this title. Aug. 14, 1935, c. 531, Title XI, § 1115, as added July 25, 1962, Pub.L. 87–543, Title I, § 122, 76 Stat. 192.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

Legislative History: For legislative history and purpose of Pub.L. 87-543, see 1962 U.S.Code Cong. and Adm.News, p. 1943.

SUBCHAPTER XII.—ADVANCES TO STATE UNEMPLOYMENT FUNDS

§ 1321. Eligibility requirements for transfer of funds; reimbursement by State; application; certification; limitation

(a) (1) Advances shall be made to the States from the Federal unemployment account in the Unemployment Trust Fund as provided in this section, and shall be repayable, without interest, in the manner provided in sections 1101(d) (1), 1103(b) (2), and 1322 of this title.

An advance to a State for the payment of compensation in any month may be made if—

(A) the Governor of the State applies therefor no earlier than the first day of the preceding month, and

(B) he furnishes to the Secretary of Labor his estimate of the amount of an advance which will be required by the State for the payment of compensation in such month.

(2) In the case of any application for an advance under this section to any State for any month, the Secretary of Labor shall—

(A) determine the amount (if any) which he finds will be required by such State for the payment of compensation in such month, and

(B) certify to the Secretary of the Treasury the amount (not greater than the amount estimated by the Governor of the State) determined under subparagraph (A).

The aggregate of the amounts certified by the Secretary of Labor with respect to any month shall not exceed the amount which the Secretary of the Treasury reports to the Secretary of Labor is available in the Federal unemployment account for advances with respect to such month.

(3) For purposes of this subsection—

(A) an application for an advance shall be made on such forms, and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law, as the Secretary of Labor deems necessary or relevant to the performance of his duties under this subchapter,

(B) the amount required by any State for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month, and

(C) the term "compensation" means cash benefits payable to individuals with respect to their unemployment, exclusive of expenses of administration.

(b) The Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office, transfer from the Federal unemployment account to the account of the State in the Unemployment Trust Fund the amount certified under subsection (a) of this section by the Secretary of Labor (but not exceeding that portion of the balance in the Federal unemployment account at the time of the transfer which is not restricted as to use pursuant to section 1103(b)(1) of this title). Aug. 14, 1935, c. 531, Title XII, § 1201, as added Oct. 3, 1944, c. 480, Title IV, § 402, 58 Stat. 790, and amended 1946 Reorg.Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095;

Aug. 6, 1947, c. 510, § 5(b), 61 Stat. 794; 1949 Reorg.Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, c. 809, Title IV, § 404(a), 64 Stat. 560; Aug. 5, 1954, c. 657, § 3, 68 Stat. 671; Sept. 13, 1960, Pub.L. 86–778, Title V, § 522(a), 74 Stat. 978.

Historical Note

1960 Amendment. Subsec. (a). Pub.L. 86–778 substituted provisions relating to advances on a monthly basis upon application of the Governor and the furnishing of an estimate of amount of requisite advance and determination and certification by the Secretary of Labor of the requisite amount limited to a sum which is available in the Federal unemployment account for advances for the month for former provisions relating to advances on a quarterly basis upon application of the Governor for a specified amount not to exceed the highest total compensation paid out under the unemployment compensation law of the State during any one of the four calendar quarters preceding the quarter in which the application is made, where the balance in the unemployment fund of the State in the Unemployment Trust Fund at the close of Sept. 30, 1953 or the last day in any ensuing calendar quarter is less than the total compensation paid out under the unemployment compensation law of the State during the twelve-month period at the close of such day; incorporated former provisions of subsec. (b), relating to repayment of advances, in par. (1), adding thereto provision for repayment, under section 1103 (b) (2) of this title, and provisions formerly designated as clauses (A) and (B) in par. (3) (A) and (C); and added par. (3) (B).

Subsec. (b). Pub.L. 86–778 eliminated provision for repayment of advances which is now incorporated in subsec. (a) (1) in the reference to repayment under sections 1101(d) (1) and 1322 of this title.

1954 Amendment. Act Aug. 5, 1954, amended section generally to provide that: (1) the first condition of eligibility for an advance is that the balance in the State unemployment fund at the close of a calendar quarter be less than the total of cash payments made by the State to individuals during the 12-month period which ends with such quarter; (2) the governor of the State must apply for an advance during the quarter following the quarter specified in paragraph (1) of subsec. (a) of this section; and (3) the total amount certified for any one application may not exceed the amount paid out by the State for cash benefits in that particular quarter.

1950 Amendment. Subsec. (a). Act Aug. 28, 1950 substituted "January 1, 1952" for "January 1, 1950".

1947 Amendment. Subsec. (a). Act Aug. 6, 1947, which substituted "June 30, 1947" for "June 30, 1945", and "January 1, 1950" for "July 1, 1947."

Effective Date of 1950 Amendment. Section 404(c) of Act Aug. 28, 1950 provided that the amendment of subsec. (a) shall be effective Jan. 1, 1950.

Transfer of Functions. All functions of all other officers of the Department of Labor and functions of all agencies and employees of such Department were, with the execption of the functions vested by the Administrative Procedure Act (section 1001 et seq. of Title 5, Executive Departments and Government Officers and Employees) in hearing examiners employed by such Department, transferred to the Secretary of Labor, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 6, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 611 of Title 5, Executive Departments and Government Officers and Employees.

Functions of the Federal Security Administrator with respect to unemployment compensation were transferred to the Secretary of Labor by 1949 Reorg. Plan No. 2, § 1. See note set out under section 133z—15 of Title 5.

Section 1 of 1949 Reorg.Plan No. 2 also provides that the functions transferred by this section shall be performed by the Secretary of Labor, or subject to his direction and control, by such officers, agencies, employees of the Department of Labor as he shall designate.

"Federal Security Administrator" was substituted for "Social Security Board" by 1946 Reorg.Plan No. 2. See note under section 902 of this title.

Termination Date. Section 4 of Act Aug. 6, 1947, provided: "Section 603 of the War Mobilization and Reconversion Act of 1944 [former section 1651 note of

Appendix to Title 50] (terminating the provisions of such Act [former sections 1651–1678 of Appendix to Title 50] on June 30, 1947) shall not be applicable in the case of the amendments made by title IV of such Act [former sections 1666 and 1667 of Appendix to Title 50] to the Social Security Act [sections 1104 and 1321 of this title]."

Applications for Transfer of Funds Under Former Provisions of Section 1321(a); Limitations. Section 522(b) of Pub.L. 86–778 provided that:

"(1) No amount shall be transferred on or after the date of the enactment of this Act [Sept. 13, 1960] from the Federal unemployment account to the account of any State in the Unemployment Trust Fund pursuant to any application made under section 1201(a) of the Social Security Act [subsec. (a) of this section] as in effect before such date; except that, if—

"(A) some but not all of an amount certified by the Secretary of Labor to the Secretary of the Treasury for transfer to the account of any State was transferred to such account before such date, and

"(B) the Governor of such State, after the date of the enactment of this Act [Sept. 13, 1960], requests the Secretary of the Treasury to transfer all or any part of the remainder to such account,

the Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office, transfer from the Federal unemployment account to the account of such State in the Unemployment Trust Fund the amount so requested or (if smaller) the amount available in the Federal unemployment account at the time of the transfer. No such amount shall be transferred under this paragraph after the one-year period beginning on the date of the enactment of this Act [Sept. 13, 1960].

"(2) For purposes of section 3302(c) of the Federal Unemployment Tax Act [section 3302(c) of Title 26] and titles IX and XII of the Social Security Act [subchapters IX and XII of this chapter], if any amount is transferred pursuant to paragraph (1) to the unemployment account of any State, such amount shall be treated as an advance made before the date of the enactment of this Act [Sept. 13, 1960]."

Advances to Alaska. Act June 1, 1955, c. 118, 69 Stat. 81, authorized the Governor of Alaska to obtain from the Federal Unemployment Fund such advances as the Territory of Alaska might qualify for and as might be necessary to obtain for the payment of unemployment compensation benefits to claimants entitled thereto under the Alaska employment security law and provided for the reimbursement of the general fund of the Territory of Alaska from which advances have been made for the payment of unemployment compensation benefits from advances made through the Governor of Alaska from the Federal Unemployment Fund.

Legislative History and Congressional Comment: For legislative history and purpose of Act Oct. 3, 1944, see 1944 U.S.Code Cong.Service, p. 1310. See, also, Act Aug. 6, 1947, 1947 U.S.Code Cong. Service, p. 1641; Act Aug. 28, 1950, 1950 U.S.Code Cong.Service, p. 3287; Act Aug. 5, 1954, 1954 U.S.Code Cong. and Adm.News, p. 2909; Pub.L. 86–778, 1960 U.S.Code Cong. and Adm.News, p. 3608.

Notes of Decisions

Alaska 2
Priority 1

Liberty references

Social Security and Public Welfare ⇐721.

C.J.S. Social Security and Public Welfare §§ 238, 239.

1. Priority

Section 191 of Title 31 giving priority to debts due to the United States provided a remedy applicable to the collection of federal unemployment compensation taxes and insurance contributions taxes due from insolvent taxpayer who had made a general assignment for benefit of creditors and since such remedy is not inconsistent with either the express language or purpose of social security legislation, claims of federal government for such taxes must be given priority over claims for state unemployment taxes. People of State of Ill. ex rel. Gordon v. U. S., Ill.1946, 66 S.Ct. 841, 328 U.S 8, 90 L.Ed. 1049.

Federal social security legislation does not relieve state unemployment tax claims against insolvent taxpayer who has made a voluntary assignment for benefit of creditors from general priority under section 191 of Title 31 accorded to debts due to the United States. Id.

2. Alaska

Section 1101 et seq. of this title, by appropriating funds for advances to, among others, certain territories, and by specifying how such advances are to be repaid, did not obviate the necessity for the enactment of special enabling legislation authorizing the Territory of Alaska to obtain such advances. 1955, 41 Op.Atty.Gen. 31.

§ 1322. Repayment by State; certification; transfer

The Governor of any State may at any time request that funds be transferred from the account of such State to the Federal unemployment account in repayment of part or all of that balance of advances, made to such State under section 1321 of this title, specified in the request. The Secretary of Labor shall certify to the Secretary of the Treasury the amount and balance specified in the request; and the Secretary of the Treasury shall promptly transfer such amount in reduction of such balance. Aug. 14, 1935, c. 531, Title XII, § 1202, as added Aug. 5, 1954, c. 657, § 3, 68 Stat. 672, and amended Sept. 13, 1960, Pub.L. 86–778, Title V, § 522(a), 74 Stat. 979.

Library references: Social Security and Public Welfare ⇨722; C.J.S. Social Security and Public Welfare § 240.

Historical Note

1960 Amendment. Pub.L. 86–778 designated provisions constituting subsec. (a) as entire section, substituted "that balance of advances, made to such State under section 1321 of this title, specified in the request" for "any remaining balance of advances made to such State under section 1321 of this title" and added "in reduction of such balance" and omitted subsecs. (b) and (c) pertaining to appropriations and repayable advances which are now incorporated in sections 1101(d) (1) and 1323 of this title.

Legislative History: For legislative history and purpose of Pub.L. 86–778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

§ 1323. Repayable advances to Federal Unemployment Account

There are authorized to be appropriated to the Federal unemployment account, as repayable advances (without interest), such sums as may be necessary to carry out the purposes of this subchapter. Whenever, after the application of section 1101(f) (3) of this title with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited against, and shall operate to reduce, such balance of advances. Aug. 14, 1935, c. 531, Title XII, § 1203, as added Aug. 5, 1954, c. 657, § 3, 68 Stat. 672, and amended Sept. 13, 1960, Pub.L. 86–778, Title V, § 522(a), 74 Stat. 979.

Historical Note

1960 Amendment. Pub.L. 86–778 substituted provisions relating to repayable advances to the Federal unemployment account for former provision defining "Governor" and now incorporated in section 1324 of this title.

Prior Provisions. Provisions similar to those comprising the first sentence of this section were contained in former section 1322(c), Act Aug. 14, 1935, c. 531, Title XII, § 1202(c), as added Aug. 5, 1954, c. 657, § 3, 68 Stat. 672, prior to amendment by Pub.L. 86–778.

Legislative History: For legislative history and purpose of Pub.L. 86–778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

§ 1324. Definition

When used in this subchapter, the term "Governor" includes the Commissioners of the District of Columbia. Aug. 14, 1935, c. 531, Title XII, § 1204, as added Sept. 13, 1960, Pub.L. 86–778, Title V, § 522(a), 74 Stat. 979.

Historical Note

Prior Provisions. Provisions similar to those comprising this section were contained in former section 1323, Act Aug. 14, 1935, c. 531, Title XII, § 1203, as added Aug. 5, 1954, c. 657, § 3, 68 Stat. 672, prior to amendment by Pub.L. 86–778.

Legislative History: For legislative history and purpose of Pub.L. 86–778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

SUBCHAPTER XIII.—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN

§§ 1331–1336. Omitted

Historical Note

Codification. Sections 1331–1336 expired upon the termination of the reconversion period beginning with fifth Sunday after Aug. 10, 1946 and ending June 30, 1950 for claiming benefits for Federal maritime service performed prior to July 1, 1949, in accordance with definitions contained in former section 1332 of this title.

Section 1331, Act Aug. 14, 1935, c. 531, Title XIII, § 1301, as added Aug. 10, 1946, c. 951, Title III, § 306, 60 Stat. 982, and amended 1949 Reorg.Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, provided for the administration of this chapter by the Secretary of Labor.

Section 1332, Act Aug. 14, 1935, c. 531, Title XIII, § 1302, as added Aug. 10, 1946, c. 951, Title III, § 306, 60 Stat. 982, and amended July 16, 1949, c. 342, §§ 1–3, 63 Stat. 445, defined the terms "reconversion period", "compensation", "Federal maritime service", and "Federal maritime wages".

Sections 1333–1336, Act Aug. 14, 1935, c. 531, Title XIII, §§ 1303–1306, as added Aug. 10, 1946, c. 951, Title III, § 306, 60 Stat. 982, and amended 1949 Reorg.Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to compensation for seamen, agreements with States, payments in absence of agreement, wage information, determination of wages; administration, review of determinations, reports; payments to States, use and return of funds, certifying and disbursing officers; and penalties, respectively.

SUBCHAPTER XIV.—GRANTS TO STATES FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED

§ 1351. Appropriations

For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals eighteen years of age and older who are permanently and totally disabled and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support or self-care, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid to the permanently and totally disabled. Aug. 14, 1935, c. 531, Title XIV, § 1401, as added Aug. 28, 1950, c. 809, Title III, Pt. 5, § 351, 64 Stat. 555, and amended 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 314(a), 70 Stat. 849; July 25, 1962, Pub.L. 87–543, Title I, § 104(c)(4), 76 Stat. 186.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

1962 Amendment. Pub.L. 87–543 inserted "to furnish rehabilitation and other services" preceding "to help such individuals" and "or retain capability for" following "attain."

1956 Amendment. Act Aug. 1, 1956 restated purpose to include assistance to individuals to attain self-support or self-care.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg. Plan No. 1.

Legislative History. For legislative history and purpose of Act Aug. 28, 1950, see 1950 U.S.Code Cong.Service, p. 3287. See, also, Pub.L. 87–543, 1962 U.S.Code Cong. and Adm.News, p. 1943.

§ 1352. State plans for aid to the permanently and totally disabled

(a) A State plan for aid to the permanently and totally disabled must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the

State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness; (5) provide such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title, aid to families with dependent children under the State plan approved under section 602 of this title, or aid to the blind under the State plan approved under section 1202 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; (9) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to the permanently and totally disabled; (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (12) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the permanently and totally disabled under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the per-

manently and totally disabled and has resided therein continuously for one year immediately preceding the application;

(2) Any citizenship requirement which excludes any citizen of the United States.

Aug. 14, 1935, c. 531, Title XIV, § 1402, as added Aug. 28, 1950, c. 809, Title III, Pt. 5, § 351, 64 Stat. 555, and amended 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 314(b), 70 Stat. 850; July 25, 1962, Pub.L. 87–543, Title I, §§ 104(a)(3)(I), 106(a)(3), 76 Stat. 185, 188.

Historical Note

1962 Amendment. Subsec. (a). Pub.L. 87–543 substituted "aid to families with dependent children" for "aid to dependent children", in cl. (7), and inserted the words ", as well as any expenses reasonably attributable to the earning of any such income", in cl. (8).

1956 Amendment. Subsec. (a) (12). Act Aug. 1, 1956 added clause (12).

Effective Date of 1962 Amendment. Amendment of subsec. (a) (8) of this section by section 106 of Pub.L. 87–543 effective July 1, 1963, see section 202(a) of Pub. L. 87–543, set out as a note under section 302 of this title.

Effective Date of 1956 Amendment. Amendment of this section by Act Aug. 1, 1956 as effective July 1, 1957, see section 314 [315] of Act Aug. 1, 1956, set out as a note under section 302 of this title.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

State Plans in Effect July 25, 1962: Automatic Conformity to Amendments. State plans in effect July 25, 1962 deemed to have been conformed to amendment of subsec. (a) (7) of this section by section 104(a) of Pub.L. 87–543, see section 104(b) of Pub.L. 87–543, set out as a note under section 601 of this title.

Public Access to State Disbursement Records. Public access to State records of disbursements of funds and payments under this subchapter, see note under section 302 of this title.

Notes of Decisions

Library references

Social Security and Public Welfare ⚖242.

C.J.S. Social Security and Public Welfare § 74.

1. Conflicting state plans

State department of public welfare had authority to adopt plan for distribution of poor relief in accordance with terms of federal grant for that purpose, and county board was compelled to make reports and accounts as required by plan, for purpose of aiding department to procure federal funds, even though plan, in some of its provisions, conflicted with this subchapter. State ex rel. Robison v. Henderson, 1955, 124 N.E.2d 150, 162 Ohio St. 504.

2. Municipal welfare policy

Municipality's welfare policy, calling for reduced eligibility for welfare aid, was violative of McKinney's N. Y. Social Welfare Law and this chapter as setting up criteria which had no sanction in law, and its enforcement could be enjoined. State Bd. of Social Welfare v. City of Newbergh, 1961, 220 N.Y.S.2d 54, 28 Misc.2d 539.

3. Income disclosure

Refusal of father of petitioner, who was 31-year-old patient at hospital, to submit

any information concerning his income did not warrant denial of disability assistance to petitioner, even though under M.G.L.A. c. 118D § 1 et seq., parents had obligation to support children if able. Fenton v. Department of Public Welfare, 1962, 182 N.E.2d 528, 344 Mass. 343.

4. Jurisdiction

The United States District Court had jurisdiction to entertain action to direct former Federal Social Security Administrator to approve State plan for aid to the disabled only if complaint contained substantial charges that this chapter required Administrator to approve plan, or Administrator relied upon unconstitutional statute in disapproving plan and jurisdiction ended upon showing that such charges could not be maintained. State of Ariz. ex rel. Arizona State Bd. of Public Welfare v. Hobby, 1954, 221 F.2d 498, 94 U.S.App.D.C. 170.

5. Soverign immunity

Where effect of suit to direct former Federal Social Security Administrator to approve state plan for aid to the permanently and totally disabled would be to require payments to state out of Federal Treasury, purpose of suit was to reach money which government owned, and where the United States had not consented to be sued, question of applicability of doctrine of sovereign immunity as bar to suit was in issue. State of Ariz. ex rel. Arizona State Bd. of Public Welfare v. Hobby, 1954, 221 F.2d 498, 94 U.S.App. D.C. 170.

Where complaint, in State's action to compel former Federal Social Security Administrator to approve State's plan for aid to disabled, alleged that if this section did not require approval, it was void as being in conflict with earlier treaties and federal Indian law, allegation did not state a statutory or constitutional basis for avoiding bar of sovereign immunity to suit. Id.

Where stautory limitation upon power of former Federal Social Security Administrator to approve or reject state plan for aid to the disabled was not set forth in complaint in suit to direct Administrator to approve plan, allegations that rejection was arbitrary, capricious, and abuse of discretion, contrary to law and in excess of statutory authority was not sufficient to avoid bar of sovereign immunity to suit. Id.

Where State's plan for aid to the disabled had been rejected by former Federal Social Security Administrator on ground that restriction regarding Indians living on federal reservation imposed residence requirement as condition of eligibility, and complaint, in State's suit to compel approval, alleged that Administrator erred in rejecting plan, allegation was not that Administrator exceeded his authority but that he made an erroneous ruling, and was not sufficient to avoid bar of sovereign immunity to suit. Id.

§ 1353. Payments to States; Computation of amounts

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) $^{2}\!/_{35}$ of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $35 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received aid to the

permanently and totally disabled in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the permanently and totally disabled in the form of medical or any other type of remedial care); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $70 multiplied by the total number of such recipients of aid to the permanently and totally disabled for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month; and

(3) in the case of any State whose State plan approved under section 1352 of this title meets the requirements of subsection (c) (1) of this section, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) services which are prescribed pursuant to subsection (c) (1) of this section and are provided (in accordance with the next sentence) to applicants for or recipients of aid to the permanently and totally disabled to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c) (1) of this section, and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid to the permanently and totally disabled, if such

services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of aid to the permanently and totally disabled, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such aid; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided,* That no funds authorized under this subchapter shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with

such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(4) in the case of any State whose State plan approved under section 1352 of this title does not meet the requirements of subsection (c) (1) of this section, an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3) and provided in accordance with the provisions of such paragraph.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of subsection (a) of this section, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of permanently and totally disabled individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this subsection for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the permanently and totally disabled furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any

prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

(c) (1) In order for a State to qualify for payments under paragraph (3) of subsection (a) of this section, its State plan approved under section 1352 of this title must provide that the State agency shall make available to applicants for or recipients of aid to the permanently and totally disabled at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (3) of subsection (a) of this section until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (3) of subsection (a) of this section but shall instead be made, subject to the other provisions of this subchapter, under paragraph (4) of such subsection. Aug. 14, 1935, c. 531, Title XIV, § 1403, as added Aug. 28, 1950, c. 809, Title III, Pt. 5, § 351, 64 Stat. 555, and amended July 18, 1952, c. 945, § 8(d), 66 Stat. 779; 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, §§ 304, 314(c), 344, 70 Stat. 847, 850, 854; Aug. 28, 1958, Pub.L. 85–840, Title V, § 504, 72 Stat. 1049; June 30, 1961, Pub.L. 87–64, Title III, § 303(c), 75 Stat. 143; July 25, 1962, Pub.L. 87–543, Title I, §§ 101(a) (4), (b) (4), 132 (c), 76 Stat. 178, 181, 195.

Library references: United States ⇐82; C.J.S. United States § 123.

Historical Note

References in Text. The Vocational Rehabilitation Act, referred to in subsec. (a) (3) (D), (E), is classified to sections 31–42 of Title 29, Labor.

1962 Amendment. Subsec. (a) (1). Pub. L. 87–543, § 132(c), substituted "2⅗" and "$35" for "four-fifths" and "$31", respectively, in subpar. (A) and "$70" for "$66" in subpar. (B).

Subsec. (a) (2). Pub.L. 87–543, § 132(c), substituted "$37.50" for "$35.50."

Subsec. (a) (3). Pub.L. 87–543, § 101(a) (4), (b) (4) (A), inserted in the opening provisions "whose State plan approved under section 1352 of this title meets the requirements of subsection (c) (1) of this section" following "any State", and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services to help attain and retain capability for self-support or self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for or recipients of aid to the permanently and totally disabled and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff services of State or local public assistance agencies to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care.

Subsec. (a) (4). Pub.L. 87–543, § 101(b) (4) (B), added subsec. (a) (4).

Subsec. (c). Pub.L. 87–543, § 101(b) (4) (C), added subsec. (c).

1961 Amendment. Subsec. (a). Pub.L. 87–64 substituted "$31" for "$30" and "$66" for "$65" in cl. (1), and "$35.50" for "$35" in cl. (2).

1958 Amendment. Subsec. (a). Pub.L. 85–840 increased the payments to the States to four-fifths of the first $30 of the average monthly payment per recipient, including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus the Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased the average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from the provisions which authorize an average monthly payment of $65 and included Guam within the provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956 Amendment. Subsec. (a). Act Aug. 1, 1956, § 304, substituted "during such quarter as aid to the permanently and totally disabled in the form of money payments under the State plan" for "during such quarter as aid to the permanently and totally disabled under the State plan" in cls. (1) and (2), "who received aid to the permanently and totally disabled in the form of money payments for each month" for "who received aid to the permanently and totally disabled for such month" in par. (A) of cl. (1), and added cl. (4).

Subsec. (a). Act Aug. 1, 1956, § 314(c), eliminated, "which shall be used exclusively as aid to the permanently and totally disabled," following "the Virgin Islands, an amount" in cls. (1) and (2), and substituted "including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of such aid to help them attain self-support or self-care" for "which amount shall be used for paying the costs of administering the State plan or for aid to the permanently and totally disabled, or both, and for no other purpose" in cl. (3).

Subsec. (a). Act Aug. 1, 1956, § 344, substituted "October 1, 1956" for "October 1, 1952", eliminated, "which shall be used exclusively as aid to the permanently and totally disabled," following "the Virgin

Islands, an amount" in cls. (1) and (2), and substituted "$60" for "$55", "the product of $30" for "the product of $25", "Secretary of Health, Education, and Welfare" for "Administrator", and "including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of such aid to help them attain self-support or self-care" for "which amount shall be used for paying the costs of administering the State plan or for aid to the permanently and totally disabled, or both, and for no other purpose".

1952 Amendment. Subsec. (a). Act July 18, 1952 increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.

Effective Date of 1962 Amendment. Amendment of subsec. (a) (1), (2) of this section by section 132(c) of Pub.L. 87-543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be made after Sept. 30, 1962, see section 202(d) of Pub.L. 87-543, set out as a note under section 303 of this title.

Amendment of subsec. (a) (3) of this section by section 101(a) (4) of Pub.L. 87-543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Aug. 31, 1962, and addition of subsecs. (a) (4) and (c) and amendment of subsec. (a) (3) of this section by section 101(b) (4) (A)-(C) of Pub.L. 87-543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, see section 202(f) of Pub. L. 87-543, set out as a note under section 303 of this title.

Effective Date of 1961 Amendment. Amendment of subsec. (a) of this section by Pub.L. 87-64 applicable only in the case of expenditures made after Sept. 30, 1961, and before July 1, 1962, under a State plan approved under subchapters I, X, or XIV of this chapter, see section 303(e) of Pub.L. 87-64, set out as a note under section 303 of this title.

Effective Date of 1956 Amendment. For effective date of amendment of this section by Pub.L. 85-840, see section 512 of Pub.L. 85-840, set out as a note under section 303 of this title.

Effective and Termination Date of 1956 Amendment. Amendment of subsec. (a) of this section by section 344 of Act Aug. 1, 1956, effective only for the period beginning Oct. 1, 1956, and ending with the close of June 30, 1959, see section 345 of Act Aug. 1, 1956, set out as a note under section 303 of this title.

Effective Date of 1956 Amendment. Amendment of this section by section 304 of Act Aug. 1, 1956 effective July 1, 1957, see section 305 of Act Aug. 1, 1956, set out as a note under section 303 of this title.

Effective and Termination Date of 1952 Amendment. Amendment of subsec. (a) effective for the period beginning Oct. 1, 1952, and ending Sept. 30, 1954, see note set out under section 303 of this title.

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5, 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

Election of Payments under Combined State Plan rather than Separate Plans. Payments to States under combined State plan under subchapter XVI of this chapter as precluding payment under State plan conforming to this subchapter, see section 141(b) of Pub.L. 87-543, set out as a note under section 1383 of this title.

Legislative History: For legislative history and purpose of Act July 18, 1952, see 1952 U.S.Code Cong. and Adm.News, p. 2363. See, also, Pub.L. 85-840, 1958 U.S. Code Cong. and Adm.News, p. 4218; Pub. L. 87-64, 1961 U.S.Code Cong. and Adm. News, p. 1855; Pub.L. 87-543, 1962 U.S. Code Cong. and Adm.News, p. 1943.

§ 1354. Operation of State plans

In the case of any State plan for aid to the permanently and totally disabled which has been approved by the Secretary of Health,

Education, and Welfare, if the Secretary after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1352(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1352 (a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State until he is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State. Aug. 14, 1935, c. 531, Title XIV, § 1404, as added Aug. 28, 1950, c. 809, Title III, Pt. 5, § 351, 64 Stat. 555, and amended 1953 Reorg.Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.

Library references: Social Security and Public Welfare ⇨242; C.J.S. Social Security and Public Welfare § 74.

Historical Note

Transfer of Functions. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of 1953 Reorg.Plan No. 1, set out as a note under section 623 of Title 5, Executive Departments and Government Officers and Employees. The Federal Security Agency and the office of Administrator were abolished by section 8 of 1953 Reorg.Plan No. 1.

§ 1355. Definitions

For the purposes of this subchapter, the term "aid to the permanently and totally disabled" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of, or any type of remedial care recognized under State law in behalf of, needy individuals eighteen years of age or older who are permanently and totally disabled, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual (a) who is a patient in an institution for tuberculosis or mental diseases, or (b) who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof. Aug. 14, 1935, c. 531, Title XIV, § 1405, as added Aug. 28, 1950, c. 809, Title III, Pt. 5, § 351, 64 Stat. 555, and amended July 25, 1962, Pub.L. 87–543, Title I, § 156(d), 76 Stat. 207.

Historical Note

1962 Amendment. Pub.L. 87-543 inserted "(if provided in or after the third month before the month in which the recipient makes application for aid)" preceding "medical care".

Effective Date of 1962 Amendment. Amendment of section by section 156(d) of Pub.L. 87-543 applicable in the case of applications made after Sept. 30, 1962, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, see section 156(e) of Pub.L. 87-543, set out as a note under section 306 of this title.

SUBCHAPTER XV.—UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES

§ 1361. Definitions

When used in this subchapter—

(a) The term "Federal service" means any service performed after 1952 in the employ of the United States or any instrumentality thereof which is wholly or partially owned by the United States, except that the term does not include service (other than service to which section 1371 of this title applies) performed—

(1) by an elective officer in the executive or legislative branch of the Government of the United States;

(2) as a member of the Armed Forces of the United States;

(3) by foreign service personnel for whom special separation allowances are provided by the Foreign Service Act of 1946;

(4) prior to January 1, 1955, for the Bonneville Power Administrator if such service constitutes employment under section 1607(m) of Title 26, Internal Revenue Code of 1939;

(5) outside the United States by an individual who is not a citizen of the United States;

(6) by any individual as an employee who is excluded by Executive order from the operation of the Civil Service Retirement Act of 1930 because he is paid on a contract or fee basis;

(7) by any individual as an employee receiving nominal compensation of $12 or less per annum;

(8) in a hospital, home, or other institution of the United States by a patient or inmate thereof;

(9) by any individual as an employee included under section 1052 of Title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government);

(10) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(11) by any individual as an employee who is employed under a Federal relief program to relieve him from unemployment;

(12) as a member of a State, county, or community committee under the Production and Marketing Administration or of any other board, council, committee, or other similar body, unless such board, council, committee, or other body is composed exclusively of individuals otherwise in the full-time employ of the United States; or

(13) by an officer or a member of the crew on or in connection with an American vessel (A) owned by or bareboat chartered to the United States and (B) whose business is conducted by a general agent of the Secretary of Commerce, if contributions on account of such service are required to be made to an unemployment fund under a State unemployment compensation law pursuant to section 1606(g) of Title 26, Internal Revenue Code of 1939, or section 3305(g) of Title 26, Internal Revenue Code of 1954.

For the purpose of paragraph (5) of this subsection, the term "United States" when used in the geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(b) The term "Federal wages" means all remuneration for Federal service, including cash allowances and remuneration in any medium other than cash.

(c) The term "Federal employee" means an individual who has performed Federal service.

(d) The term "compensation" means cash benefits payable to individuals with respect to their unemployment (including any portion thereof payable with respect to dependents).

(e) The term "benefit year" means the benefit year as defined in the applicable State unemployment compensation law; except that, if such State law does not define a benefit year, then such term means the period prescribed in the agreement under this subchapter with such State or, in the absence of an agreement, the period prescribed by the Secretary.

(f) The term "Secretary" means the Secretary of Labor. Aug. 14, 1935, c. 531, Title XV, § 1501, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1130, and amended Aug. 28, 1958, Pub.L. 85–848, § 2, 72 Stat. 1087; July 12, 1960, Pub.L. 86–624, § 30(g), 74 Stat. 420; Sept. 13, 1960, Pub.L. 86–778, Title V, §§ 531(e), 542(d), 74 Stat. 984, 986.

Library references: Social Security and Public Welfare ⇐251 et seq.; C.J.S. Social Security and Public Welfare § 154.

Historical Note

References in Text. The Foreign Service Act of 1946, referred to in subsec. (a)(3), is classified to chapter 14 of Title 22, Foreign Relations and Intercourse.

The Civil Service Retirement Act of 1930, referred to in subsec. (a) (6), is classified to chapter 30 of Title 5, Executive Departments and Government Officers and Employees.

1960 Amendment. Subsec. (a). Pub.L. 86–778 substituted "wholly or partially owned by the United States" for "wholly owned by the United States" in the opening provisions, and eliminated the words "Alaska" and "Hawaii" from the definition of "United States" in the last sentence.

Pub.L. 86–624 eliminated "Alaska, Hawaii," preceding "the District of Columbia" in the definition of the term "United States."

1958 Amendment. Subsec. (a). Pub.L. 85–848 substituted "does not include service (other than service to which section 1371 of this title applies)" for "shall not include service".

Transfer of Functions. Functions of Production and Marketing Administration, created by Secretary of Agriculture's Memorandum No. 1118, Aug. 18, 1945, were transferred to other units of the Department of Agriculture by Secretary's Department Reorganization Memorandum No. 1320, Supp. 4, Nov. 2, 1953.

Legislative History: For legislative history and purpose of Act Sept. 1, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 3891. See, also, Pub.L. 85–848, 1958 U.S.Code Cong. and Adm.News, p. 4318; Pub.L. 86–624, 1960 U.S.Code Cong. and Adm.News, p. 2963. Pub.L. 86–778, 1960 U.S.Code Cong. and Adm.News, p. 3608; Pub.L. 87–543, 1962 U.S. Code Cong. and Adm.News, p. 1943.

Cross References

Area redevelopment program retraining subsistence payments as alternative benefits, see section 2514 of this title.

§ 1362. Compensation for Federal employees under State agreements—Authority of Secretary

(a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with the agency administering the unemployment compensation law of such State, under which such State agency (1) will make, as agent of the United States, payments of compensation, on the basis provided in subsection (b) of this section, to Federal employees, and (2) will otherwise cooperate with the Secretary and with other State agencies in making payments of compensation under this subchapter.

Provisions of agreements

(b) (1) Except as provided in paragraph (2), any such agreement shall provide that compensation will be paid by the State to any Federal employee, with respect to unemployment after December 31, 1954, in the same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to such employee under the unemployment compensation law of the State if the Federal service and Federal wages of such employee assigned to such State under section 1364 of this title had been included as employment and wages under such law.

(2) In the case of the Commonwealth of Puerto Rico, the agreement shall provide that compensation will be paid by the Commonwealth of Puerto Rico to any Federal employee whose Federal service and Federal wages are assigned under section 1364 of this title to such Commonwealth, with respect to unemployment after December 31, 1960 (but only in the case of weeks of unemployment

beginning before January 1, 1966), in the same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to such employee under the unemployment compensation law of the District of Columbia if such employee's Federal service and Federal wages had been included as employment and wages under such law, except that if such employee, without regard to his Federal service and Federal wages, has employment or wages sufficient to qualify for any compensation during the benefit year under such law, then payments of compensation under this subsection shall be made only on the basis of his Federal service and Federal wages. In applying this paragraph or subsection (b) of section 1363 of this title, as the case may be, employment and wages under the unemployment compensation law of the Commonwealth of Puerto Rico shall not be combined with Federal service or Federal wages.

Determination by State agency

(c) Any determination by a State agency with respect to entitlement to compensation pursuant to an agreement under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in such manner and to such extent.

Amendment or termination of agreement

(d) Each agreement shall provide the terms and conditions upon which the agreement may be amended or terminated. Aug. 14, 1935, c. 531, Title XV, § 1502, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1131, and amended Sept. 13, 1960, Pub.L. 86–778, Title V, § 542(b) (1) (A), 74 Stat. 985.

Historical Note

1960 Amendment. Subsec. (b). Pub.L. 86–778 designated existing provisions as par. (1), substituted therein "Except as provided in paragraph (2), any" for "Any", and added par. (2).

Effective Date of 1960 Amendment. Section 542(b) (1) of Pub.L. 86–778 provided in part that the amendment of subsec. (b) of this section and subsecs. (a) and (b) of section 1363 of this title shall be effective on and after Jan. 1, 1961 (but only in the case of weeks of unemployment beginning before Jan. 1, 1966).

Legislative History: For legislative history and purpose of Pub.L. 86–778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

Notes of Decisions

Library references

Social Security and Public Welfare ⇐291 et seq.
C.J.S. Social Security and Public Welfare § 101 et seq.

1. Constitutionality

Question of constitutionality of this subchapter was required to be raised before federal authorities under federal law. Zook v. Unemployment Compensation Bd. of Review, 1963, 188 A.2d 783, 200 Pa. Super. 414.

2. Misconduct

Federal postal worker discharged for injudicious expenditure of federal funds and failure to answer official correspondence as well as general inefficiency, was guilty of "willful misconduct" and thus

not entitled to state unemployment compensation. Neumeyer v. Unemployment Compensation Bd. of Review, 1958, 144 A.2d 606, 187 Pa.Super. 321.

3. Hearing

Where federal postal employee was discharged and applied for state unemployment compensation, fact that employee was not granted a hearing before federal authorities was a matter concerning federal authorities and not the state. Neumeyer v. Unemployment Compensation Bd. of Review, 1958, 144 A.2d 606, 187 Pa. Super. 321.

4. Certification of record

Where discharged federal worker applies for state unemployment compensation, it is not necessary for federal authorities to appear in person before referee and board to testify concerning reason for worker's termination, but federal employing agency should certify facts as to this matter and whether under facts certified claimant is entitled to compensation is to be determined under state law. Neumeyer v. Unemployment Compensation Bd. of Review, 1958, 144 A.2d 606, 187 Pa.Super. 321.

5. Findings of Federal agencies

This section enabling state unemployment compensation authorities to act as agents for Federal Government in extending benefits to federal employees required Pennsylvania compensation authorities to accept as final and conclusive federal employing agency's finding with respect to whether claimant had performed federal service, amount of remuneration, and reasons for its termination. Zook v. Unemployment Compensation Bd. of Review, 1963, 188 A.2d 783, 200 Pa.Super. 414.

Amendment to this chapter authorizing Federal Government to pay unemployment compensation tax in order that federal employees might become covered by state unemployment compensation laws, imposed duty upon Pennsylvania unemployment compensation authorities to accept as final and conclusive findings of federal employing agencies with respect to whether claimant has performed federal services, period of such services, amount of remuneration for such services and reason for termination thereof, and since findings of federal employing agency on these matters are final and conclusive there is no reason for state agencies to hear claimant or to accept any other evidence, with respect to such matters. Neumeyer v. Unemployment Compensation Bd. of Review, 1958, 144 A.2d 606, 187 Pa.Super. 321.

Even if finding of federal employing agency that claimant had resigned was final and conclusive as to reason for termination of employment, it was necessary for Idaho authorities to determine whether under Idaho law claimant was entitled to unemployment compensation benefits notwithstanding that he resigned. Saulls v. Employment Sec. Agency, 1963, 377 P.2d 789, 85 Idaho 212.

Findings of federal employing agency are final and conclusive only with respect to matters enumerated in the federal statutes, and on all other matters relating to determination of entitlement of federal employee to unemployment compensation benefits, state law prevails. Id.

6. Review

Any determination by state agency with respect to entitlement to unemployment compensation under Idaho law is subject to review by Supreme Court. Saulls v. Employment Sec. Agency, 1963, 377 P.2d 789, 85 Idaho 212.

§ 1363. Compensation for Federal employees in absence of State agreement—Payments by Secretary

(a) In the case of a Federal employee whose Federal service and Federal wages are assigned under section 1364 of this title to a State which does not have an agreement under this subchapter with the Secretary, the Secretary, in accordance with regulations prescribed by him, shall, upon the filing by such employee of a claim for compensation under this subsection, make payments of compensation to him with respect to unemployment after December 31, 1954, in the same amounts, on the same terms, and subject to the same conditions as would be paid to him under the unemployment compensation law of such State if such employee's Federal service and

Federal wages had been included as employment and wages under such law, except that if such employee, without regard to his Federal service and Federal wages, has employment or wages sufficient to qualify for any compensation during the benefit year under the law of such State, then payments of compensation under this subsection shall be made only on the basis of his Federal service and Federal wages. For the purposes of this subsection, the term "State" does not include the Commonwealth of Puerto Rico.

Employees assigned to Puerto Rico and Virgin Islands

(b) In the case of a Federal employee whose Federal service and Federal wages are assigned under section 1364 of this title to Puerto Rico or the Virgin Islands, the Secretary, in accordance with regulations prescribed by him, shall, upon the filing by such employee of a claim for compensation under this subsection, make payments of compensation to him with respect to unemployment after December 31, 1954, in the same amounts, on the same terms, and subject to the same conditions as would be paid to him under the unemployment compensation law of the District of Columbia if such employee's Federal service and Federal wages had been included as employment and wages under such law, except that if such employee, without regard to his Federal service and Federal wages, has employment or wages sufficient to qualify for any compensation during the benefit year under such law, then payments of compensation under this subsection shall be made only on the basis of his Federal service and Federal wages. This subsection shall apply in respect of the Commonwealth of Puerto Rico only if such Commonwealth does not have an agreement under this subchapter with the Secretary.

Hearings for denied claims

(c) Any Federal employee whose claim for compensation under subsection (a) or (b) of this section has been denied shall be entitled to a fair hearing in accordance with regulations prescribed by the Secretary. Any final determination by the Secretary with respect to entitlement to compensation under this section shall be subject to review by the courts in the same manner and to the same extent as is provided in section 405(g) of this title with respect to final decisions of the Secretary of Health, Education, and Welfare under subchapter II of this chapter.

Utilization of Virgin Islands agency

(d) The Secretary may utilize for the purposes of this section the personnel and facilities of the agency in the Virgin Islands cooperating with the United States Employment Service under sections 49–49c, 49d, and 49e–49k of Title 29, and may delegate to officials of such agency any authority granted to him by this section whenever the Secretary determines such delegation to be necessary in carrying out the purposes of this subchapter. For the purpose of payments made to such agency under sections 49–49c, 49d, and 49e–49k of Title

29, the furnishing of such personnel and facilities shall be deemed to be a part of the administration of the public employment offices of such agency. Aug. 14, 1935, c. 531, Title XV, § 1503, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1132, and amended Sept. 13, 1960, Pub.L. 86–778, Title V, § 542(b) (1) (B), (C), (c) (1), 74 Stat. 986.

Library references: Social Security and Public Welfare ⇨723; C.J.S. Social Security and Public Welfare § 241.

Historical Note

1960 Amendment. Subsec. (a). Pub.L. 86–778, § 542(b) (1) (B), inserted sentence providing that for the purposes of this subsection the term "State" does not include the Commonwealth of Puerto Rico.

Subsec. (b). Pub.L. 86–778, § 542(b) (1) (C), made subsection applicable in respect of the Commonwealth of Puerto Rico only if such Commonwealth does not have an agreement under this subchapter with the Secretary.

Subsec. (d). Pub.L. 86–778, § 542(c) (1), eliminated provisions which authorized utilization of agencies in Puerto Rico, and substituted "agency" for "agencies" in four instances.

Effective Date of 1960 Amendment. Amendment of subsecs. (a) and (b) of this section by Pub.L. 86–778 effective on and after Jan. 1, 1961 (but only in the case of weeks of unemployment beginning before Jan. 1, 1966), see note set out under section 1362 of this title.

Section 542(c) of Pub.L. 86–778 provided in part that the amendment of subsec. (d) of this section and subsec. (e) of section 1371 of this title shall be effective on and after Jan. 1, 1961.

Payment of Unemployment Compensation to Federal Employees Whose Federal Service and Federal Wages are Assigned to Puerto Rico. Section 542(a) (1) of Pub. L. 86–778 provided that effective with respect to weeks of unemployment beginning after Dec. 31, 1965, subsec. (b) of this section is amended by striking out "Puerto Rico or."

Legislative History: For legislative history and purpose of Pub.L. 86–778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

§ 1364. Assignment to State of Federal service and wages

In accordance with regulations prescribed by the Secretary, the Federal service and Federal wages of an employee shall be assigned to the State in which he had his last official station in Federal service prior to the filing of his first claim for compensation for the benefit year, except that—

(1) if, at the time of the filing of such first claim, he resides in another State in which he performed, after the termination of such Federal service, service covered under the unemployment compensation law of such other State, such Federal service and Federal wages shall be assigned to such other State;

(2) if his last official station in Federal service, prior to the filing of such first claim, was outside the United States, such Federal service and Federal wages shall be assigned to the State where he resides at the time he files such first claim; and

(3) if such first claim is filed while he is residing in Puerto Rico or the Virgin Islands, such Federal service and Federal wages shall be assigned to Puerto Rico or the Virgin Islands.

For the purposes of paragraph (2), the term "United States" does not include the Commonwealth of Puerto Rico. Aug. 14, 1935, c. 531, Title XV, § 1504, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1133, and amended Sept. 13, 1960, Pub.L. 86–778, Title V, § 542(b)(2), 74 Stat. 986.

Historical Note

1960 Amendment. Pub.L. 86–778 inserted sentence providing that for the purposes of paragraph (2), the term "United States" does not include the Commonwealth of Puerto Rico.

Effective Date of 1960 Amendment. Section 542(b) (2) of Pub.L. 86–778 provided in part that the sentence excluding the Commonwealth of Puerto Rico from the definition of the term "United States" for the purposes of par. (2) shall be effective on and after Jan. 1, 1961 (but only in the case of first claims filed before Jan. 1, 1966).

Filing of Claim While Residing in Puerto Rico. Section 542(a) (2) of Pub. L. 86–778 provided that effective with respect to first claims filed after Dec. 31, 1965, paragraph (3) of this section is amended by striking out "Puerto Rico or" wherever appearing therein.

Legislative History: For legislative history and purpose of Pub.L. 86–778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

§ 1365. Accrued annual leave

For the purposes of this subchapter, in the case of a Federal employee who is performing Federal service at the time of his separation from employment by the United States or any instrumentality thereof, (1) the Federal service of such employee shall be considered as continuing during the period, subsequent to such separation, with respect to which he is considered as having received payment of accumulated and current annual or vacation leave pursuant to any Federal law, and (2) subject to regulations of the Secretary concerning allocation over the period, such payment shall constitute Federal wages. Aug. 14, 1935, c. 531, Title XV, § 1505, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1133.

Repeal

Pub.L. 86–442, § 1, Apr. 22, 1960, 74 Stat. 81, provided: "That, effective only with respect to benefit years which begin more than thirty days after the date of enactment of this Act [April 22, 1960], section 1505 of the Social Security Act (42 U.S.C. 1365) [this section] is hereby repealed."

Library references: Social Security and Public Welfare ⇨728; C.J.S. Social Security and Public Welfare § 243.

§ 1366. Payments to States—Computation of amount

(a) Each State shall be entitled to be paid by the United States an amount equal to the additional cost to the State of payments of compensation made under and in accordance with an agreement under this subchapter which would not have been incurred by the State but for the agreement.

Advances or reimbursement; computation

(b) In making payments pursuant to subsection (a) of this section, there shall be paid to the State, either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this subchapter for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

Certification of amounts

(c) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, from the funds for carrying out the purposes of this subchapter.

Utilization of payments

(d) All money paid a State under this subchapter shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Treasury and credited to current applicable appropriations, funds, or accounts from which payments to States under this subchapter may be made.

Surety bond for certifying officer

(e) An agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in its performance, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this subchapter.

Liability of certifying officer for payments

(f) No person designated by the Secretary, or designated pursuant to an agreement under this subchapter, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to the payment of any compensation certified by him under this subchapter.

Same; acts based on vouchers

(g) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this subchapter if it was based upon a voucher

signed by a certifying officer designated as provided in subsection (f) of this section.

Administration

(h) For the purpose of payments made to a State under subchapter III of this chapter, administration by the State agency of such State pursuant to an agreement under this subchapter shall be deemed to be a part of the administration of the State unemployment compensation law. Aug. 14, 1935, c. 531, Title XV, § 1506, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1133.

Library references: Social Security and Public Welfare ⇐721; C.J.S. Social Security and Public Welfare §§ 238, 239.

§ 1367. Dissemination of information by both Federal and State agencies

(a) All Federal departments, agencies, and wholly or partially owned instrumentalities of the United States are directed to make available to State agencies which have agreements under this subchapter or to the Secretary, as the case may be, such information with respect to the Federal service and Federal wages of any Federal employee as the Secretary may find practicable and necessary for the determination of such employee's entitlement to compensation under this subchapter. Such information shall include the findings of the employing agency with respect to—

(1) whether the employee has performed Federal service,

(2) the periods of such service,

(3) the amount of remuneration for such service, and

(4) the reasons for termination of such service.

The employing agency shall make the findings in such form and manner as the Secretary shall by regulations prescribe (which regulations shall include provision for correction by the employing agency of errors or omissions). Any such findings which have been made in accordance with such regulations shall be final and conclusive for the purposes of sections 1362(c) and 1363(c) of this title. This subsection shall not apply with respect to Federal service and Federal wages covered by section 1371 of this title.

(b) The agency administering the unemployment compensation law of any State shall furnish to the Secretary such information as the Secretary may find necessary or appropriate in carrying out the provisions of this subchapter, and such information shall be deemed reports required by the Secretary for the purposes of paragraph (6) of subsection (a) of section 503 of this title. Aug. 14, 1935, c. 531, Title XV, § 1507, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1134, and amended Aug. 28, 1958, Pub.L. 85–848, § 4, 72 Stat. 1089; Sept. 13, 1960, Pub.L. 86–778, Title V, § 531(f), 74 Stat. 984.

Historical Note

1960 Amendment. Subsec. (a). Pub.L. 86–778 substituted "wholly or partially owned instrumentalities" for "wholly owned instrumentalities."

1958 Amendment. Subsec. (a). Pub.L. 85–848 added sentence providing "This subsection shall not apply with respect to Federal service and Federal wages covered by section 1371 of this title."

Legislative History: For legislative history and purpose of Pub.L. 85–848, see 1958 U.S.Code Cong. and Adm.News, p. 4318. See, also, Pub.L. 86–778, 1960 U.S. Code Cong. and Adm.News, p. 3608.

Notes of Decisions

Findings 2
Willful misconduct 1

Library references

Social Security and Public Welfare ⇐539.
C.J.S. Social Security and Public Welfare § 213.

1. Willful misconduct

In passing on discharged federal employee's application for unemployment compensation, compensation authorities must accept reason for discharge given by federal authorities, and then determine whether, under Pennsylvania law, conduct constituted willful misconduct. McKeon v. Unemployment Compensation Bd. of Review, 1961, 169 A.2d 332, 195 Pa. Super. 69.

Federal employee who, after particular warning, failed to disclose a previous discharge in his application for employment, was guilty of willful misconduct, disqualifying him from unemployment compensation after his discharge. Id.

2. Findings

The findings of Federal Employment Agency with respect to reasons for termination of unemployment compensation claimant's service with that agency is binding on Unemployment Compensation Board of Review. Naugle v. Unemployment Compensation Bd. of Review, 1961, 168 A.2d 783, 194 Pa.Super. 420.

Where findings as to reason for termination of federal employment had not been furnished, or adequate ground shown why findings had not been furnished, unemployment benefits were not allowable to discharged federal employee. In re Forte's Claim, 1956, 158 N.Y.S.2d 91, 2 A.D.2d 903.

In proceeding on claim by discharged federal employee for unemployment insurance benefits, statements that reason for separation were "removal" and that removal was being reviewed by United States Civil Service Commission and review might result in different determination on claimant's status in federal service did not conform with requirements of this section and regulations to show upon basis of definite findings either misconduct or a voluntary separation by claimant from his employment. Id.

§ 1368. Penalties

(a) Whoever makes a false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase for himself or for any other individual any payment authorized to be paid under this subchapter or under an agreement thereunder shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(b) (1) If a State agency or the Secretary, as the case may be, or a court of competent jurisdiction, finds that any person—

(A) has made, or has caused to be made by another, a false statement or representation of a material fact knowing it to be

false, or has knowingly failed, or caused another to fail, to disclose a material fact, and

(B) as a result of such action has received any amount as compensation under this subchapter to which he was not entitled,

such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be. In lieu of requiring the repayment of any amount under this paragraph, the State agency or the Secretary, as the case may be, may recover such amount by deductions from any compensation payable to such person under this subchapter during the two-year period following the date of the finding. Any such finding by a State agency or the Secretary, as the case may be, may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under sections 1362(c) and 1363(c) of this title.

(2) Any amount repaid to a State agency under paragraph (1) of this subsection shall be deposited into the fund from which payment was made. Any amount repaid to the Secretary under said paragraph (1) shall be returned to the Treasury and credited to the current applicable appropriation, fund, or account from which payment was made. Aug. 14, 1935, c. 531, Title XV, § 1508, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1135.

Library references: Social Security and Public Welfare ⇐751; C.J.S. Social Security and Public Welfare §§ 251, 252.

§ 1369. Rules and regulations

The Secretary is authorized to make such rules and regulations as may be necessary to carry out the provisions of this subchapter. The Secretary shall insofar as practicable consult with representatives of the State unemployment compensation agencies before prescribing any rules or regulations which may affect the performance by such agencies of functions pursuant to agreements under this subchapter. Aug. 14, 1935, c. 531, Title XV, § 1509, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1135.

Library references: Administrative Law and Procedure ⇐386; C.J.S. Public Administrative Bodies and Procedure § 94.

Notes of Decisions

1. Presumptions

In proceeding by discharged federal employee for state unemployment compensation it must be presumed that Federal Secretary of Labor promulgated regulations as required by this subchapter authorizing Federal Government to pay unemployment compensation tax to cover federal workers, and that federal employing agency followed them in the particular case. Neumeyer v. Unemployment Compensation Bd. of Review, 1958, 144 A. 2d 606, 187 Pa.Super. 321.

§ 1370. Appropriations

There are authorized to be appropriated out of any moneys not otherwise appropriated such sums as are necessary to carry out the

provisions of this subchapter. Aug. 14, 1935, c. 531, Title XV, § 1510, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1135.

Library references: United States ⇐85; C.J.S. United States § 123.

§ 1371. Ex-servicemen's unemployment compensation program

(a) The provisions of this subchapter, except where inconsistent with the provisions of this section, apply, with respect to weeks of unemployment ending after the sixtieth day after August 28, 1958, to individuals who have had Federal service as defined in subsection (b) of this section.

(b) For the purposes of this section, the term "Federal service" means active service (including active duty for training purposes) in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States if—

(1) such service was continuous for ninety days or more, or was terminated earlier by reason of an actual service-incurred injury or disability; and

(2) with respect to such service, the individual (A) has been discharged or released under conditions other than dishonorable, and (B) was not given a bad conduct discharge, or, if an officer, did not resign for the good of the service.

No individual shall be treated as having Federal service within the meaning of the preceding sentence unless he has a period of such service which either begins after January 31, 1955, or terminates after the sixtieth day after August 28, 1958.

(c) For the purposes of this section, the term "Federal wages" means remuneration for the periods of service covered by subsection (b) of this section, computed on the basis of remuneration for the individual's pay grade at the time of his discharge or release from the latest period of such service as specified in the schedule applicable at the time of filing of his first claim for compensation for the benefit year. The Secretary shall issue, from time to time, after consultation with the Secretary of Defense, schedules specifying the remuneration for each pay grade of servicemen covered by this section, which shall reflect representative amounts for appropriate elements of such remuneration (whether in cash or in kind).

(d) (1) Any Federal department or agency shall, when designated by the Secretary, make available to the appropriate State agency or to the Secretary, as the case may be, such information (including findings in the form and manner prescribed by the Secretary by regulation) as the Secretary may find practicable and necessary for the determination of an individual's entitlement to compensation by reason of this section.

(2) Subject to correction of errors and omissions as prescribed by the Secretary by regulation, the following shall be final and conclusive for the purposes of sections 1362(c) and 1363(c) of this title:

(A) Any finding by a Federal department or agency, made in accordance with paragraph (1) of this subsection, with respect to (i) whether an individual has met any condition specified in subsection (b) of this section, (ii) the individual's periods of Federal service as defined in subsection (b), and (iii) the individual's pay grade at the time of his discharge or release from the latest period of such Federal service.

(B) The schedules of remuneration issued by the Secretary under subsection (c) of this section.

(e) Notwithstanding the provisions of section 1364 of this title, all Federal service and Federal wages covered by this section, not previously assigned, shall be assigned to the State, or the Virgin Islands, as the case may be, in which the claimant first files his claim for unemployment compensation after his most recent discharge or release from such Federal service. This assignment shall constitute an assignment under section 1364 of this title for all purposes of this subchapter.

(f) Payments made under section 4(c) of the Armed Forces Leave Act of 1946 at the termination of Federal service covered by this section shall be treated for determining periods of Federal service as payments of annual leave to which section 1365 of this title continues (without regard to its repeal) to apply.

(g) An individual who is eligible to receive a mustering-out payment under chapter 43 of Title 38 shall not be eligible to receive compensation under this subchapter with respect to weeks of unemployment completed within thirty days after his discharge or release if he receives $100 in such mustering-out payments; within sixty days after his discharge or release if he receives $200 in such mustering-out payment; or within ninety days after his discharge or release if he receives $300 in such mustering-out payment.

(h) No payment shall be made by reason of this section to an individual for any period with respect to which he receives an education and training allowance under subsection (a), (b), (c), or (d) of section 1632 of Title 38, a subsistence allowance under chapter 31 of such Title 38 or under part VIII of Veterans Regulation Numbered 1(a), or an educational assistance allowance under chapter 35 of such Title 38.

(i) Any individual—

(1) who meets the wage and employment requirements for compensation under the law of the State to which his Federal service and Federal wages as defined in this section have been assigned (or, in the case of Puerto Rico or the Virgin Islands,

the law of the District of Columbia) but would not meet such requirements except by the use of such Federal service and Federal wages, or

(2) whose weekly benefit amount computed according to the law of such State (or the law of the District of Columbia, as the case may be) is increased by the use of such Federal service and Federal wages,

shall not thereafter be entitled to unemployment compensation under the provisions of subchapter I of chapter 41 of Title 38. Aug. 14, 1935, c. 531, Title XV, § 1511, as added Aug. 28, 1958, Pub.L. 85–848, § 3, 72 Stat. 1087, and amended Sept. 2, 1958, Pub.L. 85–857, § 13(i) (3), 72 Stat. 1265; Apr. 22, 1960, Pub.L. 86–442, § 2, 74 Stat. 82; Sept. 13, 1960, Pub.L. 86–778, Title V, § 542(c) (2), 74 Stat. 986.

Historical Note

References in Text. Section 4(c) of the Armed Forces Leave Act of 1946, referred to in subsec. (f), refers to section 4(c) of Act Aug. 9, 1946, c. 931, as added Aug. 4, 1947, c. 475, § 1, 61 Stat. 748, and amended July 4, 1956, c. 682, § 1, 70 Stat. 625. Section 4(c) was repealed by Pub.L. 87–649, § 14, Sept. 7, 1962, 76 Stat. 499, 500, and is now covered by section 501(b)–(d) of Title 37, Pay and Allowances of the Uniformed Services.

Part VIII of Veterans Regulation Numbered 1(a), referred to in subsec. (h), was repealed by section 14(67) of Pub.L. 85–857, Sept. 2, 1958, 72 Stat. 1272, effective Jan. 1, 1959.

1960 Amendments. Subsec. (e). Pub.L. 86–778 eliminated provisions which authorized assignment of Federal service and Federal wages to Puerto Rico.

Subsec. (f). Pub.L. 86–442 substituted "section 1365 of this title continues (without regard to its repeal) to apply" for "section 1365 of this title applies."

1958 Amendment. Subsec. (g). Pub.L. 85–857, § 13(i) (3) (A), substituted "chapter 43 of Title 38" for "Title V of the Veterans' Readjustment Assistance Act of 1952 (38 U.S.C. 1011 et seq.)".

Subsec. (h). Pub.L. 85–857, § 13(i) (3) (B), substituted "section 1632 of Title 38, a subsistence allowance under chapter 31 of such Title 38 or under part VIII of Veterans Regulation Numbered 1(a), or an educational assistance allowance under chapter 35 of such Title 38" for "section 232 of the Veterans' Readjustment Assistance Act of 1952 (38 U.S.C. 942), a subsistence allowance under part VII or part VIII of Veterans Regulation Numbered 1(a), as amended, or an educational assistance allowance under the War Orphans' Educational Assistance Act of 1956 (38 U.S.C. 1031 et seq.)".

Subsec. (i). Pub.L. 85–857, § 13(i) (3) (C), substituted "subchapter I of chapter 41 of Title 38" for "Title IV of the Veterans' Readjustment Assistance Act of 1952 (38 U.S.C. 991 et seq.)".

Effective Date of 1960 Amendment. Amendment of subsec. (e) of this section by Pub.L. 86–778 effective on and after Jan. 1, 1961, see note under section 1363 of this title.

Effective Date of 1958 Amendment. Amendment of section by Pub.L. 85–857 effective Jan. 1, 1959, see section 2 of Pub.L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

Short Title. Section 1 of Pub.L. 85–848 provided that "This Act [which added this section and amended sections 1361 (a) and 1367(a) of this title] may be cited as the 'Ex-Servicemen's Unemployment Compensation Act of 1958'."

Legislative History: For legislative history and purpose of Pub.L. 85–848, see 1958 U.S.Code Cong. and Adm.News, p. 4318. See, also, Pub.L. 85–857, 1958 U.S. Code Cong. and Adm.News, p. 4352; Pub. L. 86–442, 1960 U.S.Code Cong. and Adm. News, p. 1915; Pub.L. 86–778, 1960 U.S. Code Cong. and Adm.News, p. 3608.

Notes of Decisions

Library references

Social Security and Public Welfare ⇐332.

C.J.S. Social Security and Public Welfare § 125.

1. Evidence

Evidence sustained decision that claimant had been employed on full-time basis on his father's farm and had not been available for work during period for which benefits were paid under this section. Olson v. Starkey, 1961, 107 N.W.2d 386, 259 Minn. 364.

SUBCHAPTER XVI.—GRANTS TO STATES FOR AID TO THE AGED, BLIND, OR DISABLED, OR FOR SUCH AID AND MEDICAL ASSISTANCE FOR THE AGED

§ 1381. Authorization of Appropriations

For the purpose (a) of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to needy individuals who are 65 years of age or over, are blind, or are 18 years of age or over and permanently and totally disabled, (b) of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of individuals who are 65 years of age or over and who are not recipients of aid to the aged, blind, or disabled but whose income and resources are insufficient to meet the costs of necessary medical services, and (c) of encouraging each State, as far as practicable under the conditions in such State, to furnish rehabilitation and other services to help individuals referred to in clause (a) or (b) to attain or retain capability for self-support or self-care, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid to the aged, blind, or disabled, or for aid to the aged, blind, or disabled and medical assistance for the aged. Aug. 14, 1935, c. 531, Title XVI, § 1601, as added July 25, 1962, Pub.L. 87–543, Title I, § 141(a), 76 Stat. 197.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

Legislative History: For legislative history and purpose of Pub.L. 87–543, see 1962 U.S.Code Cong. and Adm.News, p. 1943.

§ 1382. State plans for aid to aged, blind, or disabled or for such aid and medical assistance for aged—Contents

(a) A State plan for aid to the aged, blind, or disabled, or for aid to the aged, blind, or disabled and medical assistance for the aged, must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid or assistance under the plan is denied or is not acted upon with reasonable promptness;

(5) provide such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan;

(8) provide that all individuals wishing to make application for aid or assistance under the plan shall have opportunity to do so, and that such aid or assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes aid or assistance to or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) provide a description of the services (if any) which the State agency makes available to applicants for or recipients of

aid or assistance under the plan to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under subchapter I of this chapter or aid under the State plan approved under subchapter IV, X, or XIV of this chapter;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of aid or assistance under the plan;

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual who is blind, the State agency (A) shall disregard the first $85 per month of earned income plus one-half of earned income in excess of $85 per month, and (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and in making such determination with respect to any other individual who has attained age 65 and is claiming aid to the aged, blind, or disabled, of the first $50 per month of earned income the State agency may, after December 31, 1962, disregard not more than the first $10 thereof plus one-half of the remainder; and

(15) if the State plan includes medical assistance for the aged—

(A) provide for inclusion of some institutional and some non-institutional care and services;

(B) provide that no enrollment fee, premium, or similar charge will be imposed as a condition of any individual's eligibility for medical assistance for the aged under the plan;

(C) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (con-

forming to such regulations) with respect to the furnishing of such assistance to individuals who are residents of the State but are absent therefrom; and

(D) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance for the aged paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, after the death of such individual and his surviving spouse, if any, from such individual's estate) of any medical assistance for the aged correctly paid on behalf of such individual under the plan.

Notwithstanding paragraph (3), if on January 1, 1962, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter was different from the State agency which administered or supervised the administration of the plan of such State approved under subchapter I of this chapter and the State agency which administered or supervised the administration of the plan of such State approved under subchapter XIV of this chapter, the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter may be designated to administer or supervise the administration of the portion of the State plan for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) which relates to blind individuals and a separate State agency may be established or designated to administer or supervise the administration of the rest of such plan; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter.

Approval by Secretary

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid or assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for aid to the aged, blind, or disabled excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for such aid and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for

medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of the United States.

In the case of any State to which the provisions of section 344 of the Social Security Act Amendments of 1950 were applicable on January 1, 1962, and to which the sentence of section 1202(b) of this title following paragraph (2) thereof is applicable on the date on which its State plan for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) was submitted for approval under this subchapter, the Secretary shall approve the plan of such State for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) for purposes of this subchapter, even though it does not meet the requirements of paragraph (14) of subsection (a) of this section, if it meets all other requirements of this subchapter for an approved plan for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged); but payments under section 1383 of this title shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1383 of this title under a plan approved under this section without regard to the provisions of this sentence.

Limitation on number of plans

(c) Subject to the last sentence of subsection (a) of this section, nothing in this subchapter shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this subchapter. Aug. 14, 1935, c. 531, Title XVI, § 1602, as added July 25, 1962, Pub.L. 87–543, Title I, § 141(a), 76 Stat. 198, and amended Oct. 13, 1964, Pub.L. 88–650, § 5(b), 78 Stat. 1078.

Library references: Social Security and Public Welfare ⇨21 et seq., 221 et seq., 241, 242; C.J.S. Social Security and Public Welfare §§ 14, 67, 73, 74.

Historical Note

References in Text. Section 344 of the Social Security Act Amendments of 1950, referred to in subsec. (b), refers to section 344 of Act Aug. 28, 1950, c. 809, Title III, Pt. 4, 64 Stat. 554, which was repealed by section 136(b) of Pub.L. 87–543.

1964 Amendment. Subsec. (a) (14). Pub.L. 88–650 permitted the State agency, for a period not in excess of thirty-six months, to disregard such additional amounts of other income and resources.

§ 1383. Payments to States

(a) From the sums appropriated therefor, the Secretary shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1962—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the aged, blind, or disabled under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) 2⅔5 of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $35 multiplied by the total number of recipients of such aid for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received such aid in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care); plus

(B) the Federal percentage (as defined in section 1301 (a) (8) of this title) of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $70 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus

(C) the larger of the following: (i) the Federal medical percentage (as defined in section 306(c) of this title) of the amount by which such expenditures exceed the maximum which may be counted under clause (B), not counting so much of any expenditure with respect to any month as exceeds (I) the product of $85 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month, or (II) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus the product of $70 multiplied by such total number of such recipients, or (ii) 15 per centum of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan in the form of medical or any other type of remedial care, not counting so much of any expenditure with respect to any month as exceeds the product of $15 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month;

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

(A) one-half of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan (including expenditures for insurance premiums

for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus

(B) the larger of the following amounts: (i) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (I) the product of $45 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month, or (II) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus the product of $37.50 multiplied by the total number of such recipients, or (ii) 15 per centum of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan in the form of medical or any other type of remedial care, not counting so much of any expenditure with respect to any month as exceeds the product of $7.50 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month;

(3) in the case of any State, an amount equal to the Federal medical percentage (as defined in section 306(c) of this title) of the total amounts expended during such quarter as medical assistance for the aged under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof); and

(4) in the case of any State whose State plan approved under section 1382 of this title meets the requirements of subsection (c) (1) of this section, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 percentum of so much of such expenditures as are for—

(i) services which are prescribed pursuant to subsection (c) (1) of this section and are provided (in accordance with the next sentence) to applicants for or recipients of aid or assistance under the plan to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c) (1) of this section, and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid or assistance under the plan, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of aid or assistance under the plan, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such aid or assistance; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided,* That no funds authorized under this subchapter shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under

the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(5) in the case of any State whose State plan approved under section 1382 of this title does not meet the requirements of subsection (c) (1) of this section, an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (4) and provided in accordance with the provisions of such paragraph.

(b) (1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secertary may find necessary.

(2) The Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to aid or assistance furnished under the State plan, but excluding any amount of such aid or assistance recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased, shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of an estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c) (1) In order for a State to qualify for payments under paragraph (4) of subsection (a) of this section, its State plan approved under section 1382 of this title must provide that the State agency shall make available to applicants for or recipients of aid to the aged, blind, or disabled under such State plan at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (4) of subsection (a) of this section until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (4) of subsection (a) of this section but shall instead be made, subject to the other provisions of this subchapter, under paragraph (5) of such subsection. Aug. 14, 1935, c. 531, Title XVI, § 1603, as added July 25, 1962, Pub.L. 87–543, Title I, § 141(a), 76 Stat. 200.

Library references: United States ⇐82; C.J.S. United States § 123.

Historical Note

References in Text. The Vocational Rehabilitation Act, referred to in subsec. (a) (4) (D), (E), is classified to sections 31–42 of Title 29, Labor.

Election of Payments under Combined State Plan rather than Separate Plans. Section 141(b) of Pub.L. 87–543 provided that: "No payment may be made to a State under title I, X, or XIV of the Social Security Act [subchapter I, X or XIV of this chapter] for any period for which such State receives any payments under title XVI of such Act [this subchapter] or any period thereafter."

Overpayment or Underpayment Adjustments. Section 141(f) of Pub.L. 87–543 provided that: "In the case of any State which has a State plan approved under title XVI of the Social Security Act [this subchapter], any overpayment or underpayment which the Secretary determines was made to such State under section 3, 1003, or 1403 of such Act [section 303, 1203, or 1353 of this title], with respect to a period before the approval of the plan under such title XVI [this subchapter], and with respect to which adjustment has not been already made under subsection (b) of such section 3, 1003, or 1403 [subsec. (b) of section 303, 1203, or 1353 of this title], shall, for purposes of section 1603(b) of such Act [subsec. (b) of this section], be considered an overpayment or underpayment (as the case may be) made under section 1603 of such Act [this section]."

Legislative History: For legislative history and purpose of Pub.L. 87–543, see 1962 U.S.Code Cong. and Adm.News, p. 1943.

§ 1384. Operation of State plans

If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this subchapter, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1382 of this title; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure). Aug. 14, 1935, c. 531, Title XVI, § 1604, as added July 25, 1962, Pub.L. 87–543, Title I, § 141(a), 76 Stat. 204.

Library references: Social Security and Public Welfare ⇐723; C.J.S. Social Security and Public Welfare § 241.

§ 1385. Definitions

(a) For the purposes of this subchapter, the term "aid to the aged, blind, or disabled" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, are blind, or are 18 years of age or over and permanently and totally disabled, but does not include—

(1) any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases, or

(2) any such payments to any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof, or

(3) any such care in behalf of any individual, who is a patient in a medical institution as a result of a diagnosis that he has tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, as a result of such diagnosis, for forty-two days.

(b) For purposes of this subchapter, the term "medical assistance for the aged" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals who are sixty-five years of age or older and who are

not recipients of aid to the aged, blind, or disabled but whose income and resources are insufficient to meet all of such cost—

(1) in patient hospital services;

(2) skilled nursing-home services;

(3) physicians' services;

(4) outpatient hospital or clinic services;

(5) home health care services;

(6) private duty nursing services;

(7) physical therapy and related services;

(8) dental services;

(9) laboratory and X-ray services;

(10) prescribed drugs, eyeglasses, dentures, and prosthetic devices;

(11) diagnostic, screening, and preventive services; and

(12) any other medical care or remedial care recognized under State law;

except that such term does not include any such payments with respect to—

(A) care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases; or

(B) care or services for any individual, who is a patient in a medical institution as a result of a diagnosis of tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, as a result of such diagnosis, for forty-two days.

Aug. 14, 1935, c. 531, Title XVI, § 1605, as added July 25, 1962, Pub.L. 87–543, Title I, § 141(a), 76 Stat. 204.

SUBCHAPTER XVII.—GRANTS FOR PLANNING COMPREHENSIVE ACTION TO COMBAT MENTAL RETARDATION

§ 1391. Appropriations

For the purpose of assisting the States (including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) to plan for and take other steps leading to comprehensive State and community action to combat mental retardation, there is authorized to be appropriated the sum of $2,200,000. Aug. 14, 1935, c. 531, Title XVII, § 1701, as added Oct. 24, 1963, Pub.L. 88–156, § 5, 77 Stat. 275.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

Short Title. Section 1 of Pub.L. 88–156 provided: "That this Act [enacting this subchapter and sections 729 and 729a of this title, amending sections 701, 702(a), (b), 711 and 712(a), (b) of this title, and enacting provision set out as a note under this section] may be cited as the 'Maternal and Child Health and Mental Retardation Planning Amendments of 1963.'"

Definition of "Secretary". Section 6 of Pub.L. 88–156 provided that: "As used in the amendments to the Social Security Act made by this Act [see Short Title note under this section], the term 'Secretary' means the Secretary of Health, Education, and Welfare."

Legislative History: For legislative history and purpose of Pub.L. 88–156, see 1963 U.S.Code Cong. and Adm.News, p. 1018.

§ 1392. Availability of funds during fiscal years 1964 and 1965; limitation on amount; utilization of grant

The sums appropriated pursuant to section 1391 of this title shall be available for grants to States by the Secretary during the fiscal year ending June 30, 1964, and the succeeding fiscal year. Any such grant to a State, which shall not exceed 75 per centum of the cost of the planning and related activities involved, may be used by it to determine what action is needed to combat mental retardation in the State and the resources available for this purpose, to develop public awareness of the mental retardation problem and of the need for combating it, to coordinate State and local activities relating to the various aspects of mental retardation and its prevention, treatment, or amelioration, and to plan other activities leading to comprehensive State and community action to combat mental retardation. Aug. 14, 1935, c. 531, Title XVII, § 1702, as added Oct. 24, 1963, Pub.L. 88–156, § 5, 77 Stat. 275.

Library references: Mental Health ⇐1; C.J.S. Insane Persons § 3.

Historical Note

Legislative History: For legislative history and purpose of Pub.L. 88–156, see 1963 U.S.Code Cong. and Adm.News, p. 1018.

§ 1393. Applications; single State agency designation; essential planning services; plans for expenditure; final activities report and other necessary reports; records; accounting

In order to be eligible for a grant under section 1392 of this title, a State must submit an application therefor which—

(1) designates or establishes a single State agency, which may be an interdepartmental agency, as the sole agency for carrying out the purposes of this subchapter;

(2) indicates the manner in which provision will be made to assure full consideration of all aspects of services essential to

planning for comprehensive State and community action to combat mental retardation, including services in the fields of education, employment, rehabilitation, welfare, health, and the law, and services provided through community programs for and institutions for the mentally retarded;

(3) sets forth its plans for expenditure of such grant, which plans provide reasonable assurance of carrying out the purposes of this subchapter;

(4) provides for submission of a final report of the activities of the State agency in carrying out the purposes of this subchapter, and for submission of such other reports, in such form and containing such information, as the Secretary may from time to time find necessary for carrying out the purposes of this subchapter and for keeping such records and affording such access thereto as he may find necessary to assure the correctness and verification of such reports; and

(5) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subchapter.

Aug. 14, 1935, c. 531, Title XVII, § 1703, as added Oct. 24, 1963, Pub.L. 88–156, § 5, 77 Stat. 275.

Historical Note

Legislative History: For legislative history and purpose of Pub.L. 88–156, see 1963 U.S.Code Cong. and Adm.News, p. 1018.

§ 1394. Payments to States; adjustments; advances or reimbursement; installments; conditions

Payment of grants under this subchapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may determine. Aug. 14, 1935, c. 531, Title XVII, § 1704, as added Oct. 24, 1963, Pub.L. 88–156, § 5, 77 Stat. 276.

Historical Note

Legislative History: For legislative history and purpose of Pub.L. 88–156, see 1963 U.S.Code Cong. and Adm.News, p. 1018.

CHAPTER 7A.—TEMPORARY UNEMPLOYMENT COMPENSATION PROGRAM

SUBCHAPTER I.—INDIVIDUALS WHO HAVE EXHAUSTED THEIR RIGHTS

SUBCHAPTER II.—GENERAL PROVISIONS

SUBCHAPTER III.—EXTENDED PROGRAM FOR 1961–1962

SUBCHAPTER I.—INDIVIDUALS WHO HAVE EXHAUSTED THEIR RIGHTS

§ 1400. Payment of compensation—Eligibility

(a) (1) Payment of temporary unemployment compensation under sections 1400–1400k of this title shall be made, for any week of unemployment which begins on or after the fifteenth day after June 4, 1958 and before July 1, 1959, to individuals who have, after June 30, 1957 (or after such later date as may be specified pursuant to section 1400a(b) of this title), exhausted (within the meaning prescribed by the Secretary by regulations) all rights under the unemployment compensation laws referred to in paragraph (3) and who have no rights to unemployment compensation with respect to such week under any such law or under any other Federal or State unemployment compensation law. Payment of temporary unemployment

compensation under sections 1400–1400k of this title to any individual shall be made only if such individual had exhausted all rights under the unemployment compensation laws referred to in paragraph (3) of this subsection before April 1, 1959, and his first claim under such sections was filed before April 1, 1959, in States in which unemployment compensation is paid on the basis of flexible-weeks, before April 5, 1959, in States in which unemployment compensation is paid on the basis of calendar-weeks, and before April 7, 1959, in States in which unemployment compensation is paid on the basis of statutory or payroll weeks.

(2) Except as provided in section 1400b of this title, payment of temporary unemployment compensation under sections 1400–1400k of this title shall be made only pursuant to an agreement entered into under section 1400a of this title and only for weeks of unemployment beginning after the date on which the agreement is entered into.

(3) The unemployment compensation laws referred to in this paragraph are:

(A) Any unemployment compensation law of a State.

(B) Title XV of the Social Security Act, as amended.

(C) Title IV of the Veterans' Readjustment Assistance Act of 1952, as amended.

Maximum aggregate amount payable

(b) The maximum aggregate amount of temporary unemployment compensation payable to any individual under sections 1400–1400k of this title shall be an amount equal to 50 per centum of the total amount (including allowances for dependents, but excluding any temporary additional unemployment benefits) which was payable to him, under the unemployment compensation law or laws referred to in subsection (a) (3) of this section under which he last exhausted his rights before making his first claim under such sections, for the benefit year with respect to which this last exhaustion occurred: *Provided, however,* That the amount so payable shall be reduced by the amount of any temporary additional unemployment compensation payable to him under the employment compensation law of any State. The term "benefit year" means the benefit year as defined in the applicable State unemployment compensation law; except that, if such law does not define a benefit year, then such term means the period prescribed by the Secretary.

Weekly benefit amount

(c) The temporary unemployment compensation payable to an individual under sections 1400–1400k of this title for a week of total unemployment shall be the weekly benefit amount (including allowances for dependents) for total unemployment which was payable to him pursuant to the unemployment compensation law or laws referred to in subsection (a) (3) of this section under which he most

recently exhausted his rights. The temporary unemployment compensation payable to an individual under sections 1400–1400k of this title for a week of less than total unemployment shall be computed on the basis of such weekly benefit amount.

Application of State laws

(d) Except where inconsistent with the provisions of this subchapter, the terms and conditions of the unemployment compensation law or laws referred to in subsection (a) (3) of this section under which an individual most recently exhausted his rights shall be applicable to his claims for temporary unemployment compensation under sections 1400–1400k of this title and to the payment thereof. Pub.L. 85–441, Title I, § 101, June 4, 1958, 72 Stat. 171; Pub.L. 86–7, Mar. 31, 1959, 73 Stat. 14.

Library references: Social Security and Public Welfare ⇐382 et seq.; C.J.S. Social Security and Public Welfare § 155.

Historical Note

References in Text. Title XV of the Social Security Act as amended, referred to in subsec. (a) (3) (B), is classified to section 1361 et seq. of this title.

Title IV of the Veterans' Readjustment Assistance Act of 1952, as amended, referred to in subsec. (a) (3) (C), is Act July 16, 1952, c. 875, Title IV, §§ 401–409, 66 Stat. 663, which was repealed effective Jan. 1, 1959 by section 14(101) of Pub. L. 85–857, Sept. 2, 1958, 72 Stat. 1273. See section 2001 et seq. of Title 38, Veterans' Benefits.

1959 Amendment. Subsec. (a) (1). Pub.L. 86–7 substituted "July" for "April" and added sentence permitting payment only if individual had exhausted rights under laws referred to in par. (3) and his first claim was filed before Apr. 1, 1959 where State unemployment compensation is paid on basis of flexible weeks, before Apr. 5, 1959, where paid on basis of calendar-weeks, and before Apr. 7, 1959, where paid on basis of statutory or payroll weeks.

Short Title. Section 1 of Pub.L. 85–441 provided that: "This Act [which enacted subchapters I and II of this chapter] may be cited as the 'Temporary Unemployment Compensation Act of 1958'."

Legislative History: For legislative history and purpose of Pub.L. 85–441, see 1958 U.S.Code Cong. and Adm.News, p. 2582. See, also, Pub.L. 86–7, 1959 U.S. Code Cong. and Adm.News, p. 1428.

§ 1400a. Agreements with States—Payments of temporary unemployment compensation

(a) The Secretary is authorized on behalf of the United States to enter into an agreement with a State, or with the agency administering the unemployment compensation law of such State, under which such State agency—

(1) will make, as agent of the United States, payments of temporary unemployment compensation to the individuals referred to in section 1400 of this title on the basis provided in sections 1400–1400k of this title; and

(2) will otherwise cooperate with the Secretary and with other State agencies in making payments of temporary unemployment compensation under sections 1400–1400k of this title.

Selection of later date for exhaustions under State law

(b) If the State so requests, the agreement entered into under this section shall specify, in lieu of June 30, 1957, such later date as the State may request. In any such case, an exhaustion under the unemployment compensation law of such State shall not be taken into account for the purposes of sections 1400–1400k of this title unless it occurred after such later date.

Amendment, suspension, or termination of agreement

(c) Each agreement under sections 1400–1400k of this title shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

Denial or reduction of State benefits

(d) Any agreement under sections 1400–1400k of this title shall provide that unemployment compensation otherwise payable to any individual under the State's unemployment compensation law will not be denied or reduced for any week by reason of any right to temporary unemployment compensation under such sections. This subsection shall not apply to a State law which temporarily extended the duration of unemployment compensation benefits, if such State law provides for its expiration by reason of the enactment of sections 1400–1400k of this title. Pub.L. 85–441, Title I, § 102, June 4, 1958, 72 Stat. 172.

Notes of Decisions

Library references

Social Security and Public Welfare ⇐721 et seq.

C.J.S. Social Security and Public Welfare §§ 251, 252.

1. State authorization

Where Federal Goverment enacted this chapter to provide for continued payments to eligible persons whose rights to benefits under permanent unemployment compensation statutes had been exhausted, and payment of benefits by Federal Government was contingent upon execution by state of agreement to repay sums advanced, only the Legislature, and not the unemployment compensation commission or commissioner, had authority to authorize making of such agreement. Cole v. Kentucky Unemployment Ins. Commission, Ky.1958, 315 S.W. 2d 457.

§ 1400b. Veterans and Federal employees—Extension of agreement with State

(a) For the purpose of paying the temporary unemployment compensation provided in sections 1400–1400k of this title to individuals—

(1) who have, after June 30, 1957, exhausted their rights to unemployment compensation under title XV of the Social Security Act or title IV of the Veterans' Readjustment Assistance Act of 1952, and

(2) in a State, if there is no agreement entered into under section 1400a of this title which applies with respect to the weeks of unemployment concerned,

the Secretary is authorized to extend any existing agreement with such State. Any such extension shall apply only to weeks of unemployment beginning after such extension is made. For the purposes of sections 1400–1400k of this title, any such extension shall be treated as an agreement entered into under such sections.

Employees in Puerto Rico and Virgin Islands

(b) For the purpose of paying the temporary unemployment compensation provided in sections 1400–1400k of this title to individuals—

(1) who have, after June 30, 1957, exhausted their rights to unemployment compensation under title XV of the Social Security Act or title IV of the Veterans' Readjustment Assistance Act of 1952, and

(2) in Puerto Rico or the Virgin Islands,

the Secretary is authorized to utilize the personnel and facilities of the agencies in Puerto Rico and the Virgin Islands cooperating with the United States Employment Service under the Act of June 6, 1933, and may delegate to officials of such agencies any authority granted to him by sections 1400–1400k of this title whenever the Secretary determines such delegation to be necessary in carrying out the purposes of such sections; and may allocate or transfer funds or otherwise pay or reimburse such agencies for the total cost of the temporary unemployment compensation paid under such sections and for expenses incurred in carrying out the purposes of such sections.

Review of denial of benefits

(c) Any individual referred to in subsection (b) of this section whose claim for temporary unemployment compensation under sections 1400–1400k of this title has been denied shall be entitled to a fair hearing and review as provided in section 1363(c) of this title. Pub.L. 85–441, Title I, § 103, June 4, 1958, 72 Stat. 173.

Library references: Social Security and Public Welfare ⇐332; C.J.S. Social Security and Public Welfare § 125.

Historical Note

References in Text. Title XV of the Social Security Act, referred to in subsecs. (a) (1) and (b) (1), is classified to section 1361 et seq. of this title.

Title IV of the Veterans' Readjustment Assistance Act of 1952, referred to in subsecs. (a) (1) and (b) (1), is Act July 16, 1952, c. 875, Title IV, §§ 401–409, 66 Stat. 663, which was repealed effective Jan. 1, 1959 by section 14(101) of Pub.L. 85–857, Sept. 2, 1958, 72 Stat. 1273. See section 2001 et seq. of Title 38, Veterans' Benefits.

The Act of June 6, 1933, referred to in subsec. (b), means Act June 6, 1933, c. 49, 48 Stat. 113, which is classified to sections 49–49c, 49d, 49g, 49h, 49j, and 49k of Title 29, Labor.

§ 1400c. Repayment; reduction of credits

The total credits allowed under section 3302(c) of Title 26 to taxpayers with respect to wages attributable to a State shall be reduced—

(1) for the taxable year beginning on January 1, 1963, by 5 percent of the tax imposed by section 3301 of Title 26, and

(2) for any succeeding taxable year, by 10 percent of the tax imposed by said section 3301,

unless and until the Secretary of the Treasury finds that before November 10 of the taxable year there have been restored to the Treasury the amounts of temporary unemployment compensation paid in the State under sections 1400–1400k of this title (except amounts paid to individuals who exhausted their unemployment compensation under title XV of the Social Security Act and title IV of the Veterans' Readjustment Assistance Act of 1952 prior to their making their first claims under sections 1400–1400k of this title), the amount of costs incurred in the administration of sections 1400–1400k of this title with respect to the State, and the amount estimated by the Secretary of Labor as the State's proportionate share of other costs incurred in the administration of sections 1400–1400k of this title. In applying clauses (1) and (2) of the preceding sentence, the tax imposed by section 3301 of Title 26 shall be computed at the rate of 3 percent in lieu of the rate provided by such section. At the request (made before November 1 of the taxable year) of the Governor of any State, the Secretary of Labor shall, as soon as practicable after June 30 or (if later) the date of the receipt of such request, certify to such Governor and to the Secretary of the Treasury the amount he estimates for the taxable year beginning on January 1, 1963, equals .15 percent (and for any succeeding taxable year equals .3 percent) of the total of the remuneration which would have been subject to contributions under the State unemployment compensation law with respect to the calendar year preceding such certification if the dollar limit on remuneration subject to contributions under such law were equal to the dollar limit under section 3306(b) (1) of Title 26 for such calendar year. If, after receiving such certification and before November 10 of the taxable year, the State restores to the general fund of the Treasury the amount so certified (and designates such restoration as being made for purposes of this sentence), the reduction provided by the first sentence of this section shall not apply for such taxable year. Pub.L. 85–441, Title I, § 104, June 4, 1958, 72 Stat. 173; Pub.L. 86–778, Title V, § 524(b), Sept. 13, 1960, 74 Stat. 982; Pub.L. 88–173, § 2, Nov. 7, 1963, 77 Stat. 306.

Library references: Social Security and Public Welfare ⇨730; C.J.S. Social Security and Public Welfare § 243.

Historical Note

References in Text. Title XV of the Social Security Act, referred to in the text, is classified to section 1361 et seq. of this title.

Title IV of the Veterans' Readjustment Assistance Act of 1952, referred to in the text, is Act July 16, 1952, c. 875, Title IV, §§ 401–409, 66 Stat. 663, which was repealed effective Jan. 1, 1959 by section 14(101) of Pub.L. 85–857, Sept. 2, 1958, 72 Stat. 1273. See section 2001 et seq. of Title 38, Veterans' Benefits.

1963 Amendment. Pub.L. 88–173 substituted provisions which reduce the credits allowed under section 3302(c) of Title 26 respecting wages attributable to a State for the year beginning January 1, 1963, by 5 percent of the tax imposed by section 3301 of Title 26, and for any succeeding year, by 10 percent of said tax, for provisions which reduced said credits for the year beginning January 1, 1963, and for each year thereafter in the same manner as in section 3302(c) (2) of Title 26 for the repayment of advances under title XII of the Social Security Act, "and" for "or" preceding "until the Secretary of the Treasury", provided that in applying clauses (1) and (2), the tax imposed by section 3301 of Title 26 shall be computed at 3 percent in lieu of such section's rate, that at a Governor's request, the Secretary of Labor shall certify to such Governor and to the Secretary of the Treasury the amount he estimates for the year beginning January 1, 1963, equals .15 per cent, and for succeeding years, .3 percent, of the total remuneration which would have been subject to contributions if the dollar limit on remuneration subject to contributions under the State unemployment compensation law were equal to the dollar limit of section 3306(b) (1) of Title 26, and that if after certification and prior to November 10 of the taxable year, the State restores to the Treasury the amount so certified, the reduction provided by the first sentence of the section shall not apply for such taxable year.

1960 Amendment. Pub.L. 86–778 substituted "before November 10 of the taxable year" for "by December 1 of the taxable year" and eliminated provisions which authorized appropriation of excess amounts to the Unemployment Trust Fund.

Legislative History: For legislative history and purpose of Pub.L. 86–778, see 1960 U.S.Code Cong. and Adm.News, p. 3608.

SUBCHAPTER II.—GENERAL PROVISIONS

§ 1400d. Definitions

For the purposes of sections 1400–1400k of this title—

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "State" includes the District of Columbia, Alaska, and Hawaii.

(3) The term "first claim" means the first request for determination of benefit status under sections 1400–1400k of this title on the basis of which a weekly benefit amount under such sections is established, without regard to whether or not any benefits are paid. Pub.L. 85–441, Title II, § 201, June 4, 1958, 72 Stat. 174.

Historical Note

Admission of Alaska and Hawaii to Statehood. Alaska was admitted into the Union on Jan. 3, 1959 upon the issuance of Proc. No. 3269, Jan. 5, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959 upon the issuance of Proc. No. 3309, Aug. 25, 1959, 24 F.R 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub.L. 85-508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub.L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

§ 1400e. Review of determination by State agencies

Any determination by a State agency with respect to entitlement to temporary unemployment compensation pursuant to an agreement under sections 1400–1400k of this title shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in such manner and to such extent. Pub.L. 85–441, Title II, § 202, June 4, 1958, 72 Stat. 174.

Library references: Social Security and Public Welfare ⇐632; C.J.S. Social Security and Public Welfare §§ 225, 227, 234.

§ 1400f. False statements or representations; penalties; recovery of overpayments

(a) Whoever makes a false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase for himself or for any other individual any payment under sections 1400–1400k of this title shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(b) (1) If a State agency or the Secretary, as the case may be, or a court of competent jurisdiction, finds that any person—

(A) has made, or has caused to be made by another, a false statement or representation of a material fact knowing it to be false, or has knowingly failed, or caused another to fail, to disclose a material fact, and

(B) as a result of such action has received any payment under sections 1400–1400k of this title to which he was not entitled,

such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be. In lieu of requiring the repayment of any amount under this paragraph, the State agency or the Secretary, as the case may be, may recover such amount by deductions from any compensation payable to such person under sections 1400–1400k of this title. Any such finding by a State agency or the Secretary, as the case may be, may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under sections 1400b(c) and 1400e of this title.

(2) Any amount repaid to a State agency under paragraph (1) shall be deposited into the fund from which payment was made. Any amount repaid to the Secretary under paragraph (1) shall be returned to the Treasury and credited to the current applicable appropriation, fund, or account from which payment was made. Pub. L. 85–441, Title II, § 203, June 4, 1958, 72 Stat. 174.

Library references: Fraud ⇐68; C.J.S. Fraud § 154.

§ 1400g. Information from State agencies

The agency administering the unemployment compensation law of any State shall furnish to the Secretary (on a reimbursable basis) such information as he may find necessary or appropriate in carrying out the provisions of sections 1400–1400k of this title. Pub.L. 85–441, Title II, § 204, June 4, 1958, 72 Stat. 175.

Library references: Social Security and Public Welfare ⇐531; C.J.S. Social Security and Public Welfare § 209.

§ 1400h. Payments to States—Payment on calendar month basis

(a) There shall be paid to each State which has an agreement under sections 1400–1400k of this title, either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under such sections for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

Certification to Secretary of Treasury

(b) The Secretary shall from time to time certify to the Secretary of the Treasury for payment—

(1) to each State which has an agreement under sections 1400–1400k of this title sums payable to such State under subsection (a) of this section, and

(2) to each State such amounts as the Secretary determines to be necessary for the proper and efficient administration of sections 1400–1400k of this title in such State.

The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, from the funds appropriated for carrying out the purposes of sections 1400–1400k of this title.

Use of money paid to a State

(c) All money paid a State under sections 1400–1400k of this title shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under such sections, to the Treasury and credited to current applicable appropriations, funds, or accounts from which payments to States under such sections may be made.

Surety bonds

(d) An agreement under sections 1400–1400k of this title may require any officer or employee of the State certifying payments or

disbursing funds pursuant to the agreement, or otherwise participating in its performance, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of such sections.

Liability of certifying officers

(e) No person designated pursuant to an agreement under sections 1400–1400k of this title as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to the payment of any compensation certified by him under such sections.

Liability of disbursing officers

(f) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under sections 1400–1400k of this title if it was based upon a voucher signed by a certifying officer designated as provided in subsection (e) of this section. Pub.L. 85–441, Title II, § 205, June 4, 1958, 72 Stat. 175.

Library references: Social Security and Public Welfare ⇐723; C.J.S. Social Security and Public Welfare § 241.

§ 1400i. Denial of benefits to aliens employed by Communist governments or organizations

No person who is an alien shall be entitled to any benefit under sections 1400–1400k of this title for any week of unemployment if, at any time on or after the first day of his applicable base period and before the beginning of such week, he was at any time employed by—

(1) a foreign government which, at the time of such employment, was Communist or under Communist control, or any agency or instrumentality of any such foreign government, or

(2) any organization if, at the time of such employment (A) such organization was registered under section 786 of Title 50, or (B) there was in effect a final order of the Subversive Activities Control Board requiring such organization to register under section 786 of Title 50, or determining that it is a Communist-infiltrated organization.

Pub.L. 85–441, Title II, § 206, June 4, 1958, 72 Stat. 176.

Library references: Social Security and Public Welfare ⇐291; C.J.S. Social Security and Public Welfare § 101.

§ 1400j. Rules and regulations

The Secretary is hereby authorized to make such rules and regulations as may be necessary to carry out the provisions of sections 1400–1400k of this title. Pub.L. 85–441, Title II, § 207, June 4, 1958, 72 Stat. 176.

Library references: Administrative Law and Procedure ⇐386; C.J.S. Public Administrative Bodies and Procedure § 94.

§ 1400k. Authorization of appropriations

There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the purposes of sections 1400–1400k of this title. Pub. L. 85–441, Title II, § 208, June 4, 1958, 72 Stat. 176.

SUBCHAPTER III.—EXTENDED PROGRAM FOR 1961–1962

§ 1400*l*. Definitions

For purposes of this subchapter—

(1) The term "compensation period" means, in the case of any individual, the period beginning with the first day of a benefit year (determined under applicable State law) for such individual and ending on the day before the first day of the next benefit year (determined under applicable State law) for such individual. If the applicable State law does not define a benefit year, then for purposes of the preceding sentence such term has the meaning prescribed by the Secretary.

(2) The term "first claim" means the first request for determination of an individual's right to temporary extended unemployment compensation, without regard to whether or not any compensation is paid.

(3) The term "State unemployment compensation" means the regular unemployment compensation payable to an individual under the State law or title XV, and any additional unemployment compensation payable to such individual under the State law or title XV during periods of high unemployment.

(4) The term "Secretary" means the Secretary of Labor of the United States.

(5) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

(6) The term "State agency" means the agency of the State which administers its State law.

(7) The term "State law" means the unemployment compensation law of the State, approved by the Secretary under section 3304 of Title 26, and the unemployment compensation law of Puerto Rico during the last six months before January 1, 1961.

(8) The term "temporary extended unemployment compensation" means the additional unemployment compensation payable under this subchapter.

(9) The term "title XV" means title XV of the Social Security Act.

(10) The term "week" means a week as defined in the applicable State law.

Pub.L. 87–6, § 2, Mar. 24, 1961, 75 Stat. 8.

Historical Note

References in Text. "Subchapter", referred to in the text, reads "Act" in the original, meaning Pub.L. 87–6, which enacted this subchapter and section 1105 of this title, amended sections 3301 and 3302(d) (1) of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 1101 of this title.

"Title XV", referred to in the text, means title XV of the Social Security Act, which is classified to subchapter XV of chapter 7 of this title.

Short Title. Section 1 of Pub.L. 87–6 provided: "That this Act [enacting this subchapter and section 1105 of this title, amending sections 3301 and 3302(d) (1) of Title 26, Internal Revenue Code, and enacting provisions set out as a note under section 1101 of this title] may be cited as the 'Temporary Extended Unemployment Compensation Act of 1961'."

Legislative History: For legislative history and purpose of Pub.L. 87–6, see 1961 U.S.Code Cong. annd Adm.News, p. 1477.

§ 1400m. Payment of compensation—Eligibility

(a) Payment of temporary extended unemployment compensation shall be made, for any week of unemployment which begins in the covered period specified in section 1400p of this title, to individuals who have, after June 30, 1960, exhausted (within the meaning prescribed by the Secretary by regulations) all rights under the State law and title XV and who have no rights to unemployment compensation with respect to such week under any such law or under any other Federal or State unemployment compensation law.

Weekly benefit amount

(b) The temporary extended unemployment compensation payable to an individual for a week of total unemployment shall be the weekly benefit amount (including allowances for dependents) for total unemployment which was payable to him pursuant to the State law or title XV under which he last exhausted his rights before making his first claim under this subchapter. The temporary extended unemployment compensation payable to an individual for a week of less than total unemployment shall be computed on the basis of such weekly benefit amount, except that in such computation allowances for dependents shall be taken into account in the manner provided by the applicable State law with respect to such a week of less than total unemployment.

Application of State laws

(c) Except where inconsistent with the provisions of this subchapter, the terms and conditions of the State law or title XV under which an individual most recently exhausted his rights shall apply to his claim for temporary extended unemployment compensation and to the payment thereof. Pub.L. 87–6, § 3, Mar. 24, 1961, 75 Stat. 8.

Historical Note

References in Text. "Subchapter", referred to in the text, reads "Act" in the original, meaning Pub.L. 87–6, which enacted this subchapter and section 1105 of

this title, amended sections 3301 and 3302 (d) (1) of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 1101 of this title.

Definition of "title XV", referred to in the text, see section 1400l of this title and note thereunder.

§ 1400n. Reimbursement

The United States shall reimburse any State, with which an agreement has been entered into under section 1400q of this title which includes the provisions specified in subsection (a) (2) thereof, for any State unemployment compensation paid by it to an individual with respect to a week of unemployment beginning in the covered period specified in section 1400p of this title, to the extent that the sum of such payment, plus the State unemployment compensation paid by such State for prior weeks of unemployment in the compensation period and not reimbursed under this section, exceeds 26 times the weekly benefit amount (including allowances for dependents) for total unemployment which was payable to such individual pursuant to State law or title XV in such compensation period. Pub.L. 87–6, § 4, Mar. 24, 1961, 75 Stat. 9.

Historical Note

References in Text. Definition of "title XV", referred to in the text, see section 1400l of this title and note thereunder.

§ 1400o. Limitation on total payments and reimbursements —Overall limitation

(a) The sum of the temporary extended unemployment compensation payable to any individual, plus the State unemployment compensation paid to such individual with respect to which any State is entitled to reimbursement under this subchapter (or would be entitled to such reimbursement but for the fact that such compensation is paid under title XV), shall not exceed whichever of the following amounts is the smaller:

(1) An amount equal to 50 percent of the total amount of State unemployment compensation (including allowances for dependents) which was payable to him for his first compensation period, or

(2) An amount equal to 13 times his weekly benefit amount for his first compensation period.

Limitation based on compensation period

(b) Payment of temporary extended unemployment compensation (and reimbursement of State unemployment compensation) shall not be made with respect to any individual for any week of unemployment, to the extent that such payment or reimbursement, when added to the sum of State unemployment compensation and temporary extended unemployment compensation paid to such individual with respect to prior weeks in the compensation period, would exceed 39

times such individual's weekly benefit amount for such compensation period.

Definitions

(c) For purposes of this section—

(1) The term "first compensation period" means—

(A) in the case of any individual whose first claim under this subchapter is for a week of unemployment before his first reimbursement week, the compensation period in which he last exhausted his rights to State unemployment compensation before making such first claim, or

(B) in the case of any other individual, the compensation period in which his first reimbursement week occurs.

(2) In the case of any individual, the term "first reimbursement week" means the first week with respect to which any State is entitled to reimbursement under section 1400n of this title (or would be entitled to such reimbursement but for the fact that the compensation was paid under title XV).

(3) An individual's weekly benefit amount for any compensation period is the weekly benefit amount (including allowances for dependents) for total unemployment which was payable to him in such compensation period pursuant to the State law or title XV.

Pub.L. 87-6, § 5, Mar. 24, 1961, 75 Stat. 9.

Historical Note

References in Text. "Subchapter", referred to in the text, reads "Act" in the original, meaning Pub.L. 87-6, which enacted this subchapter and section 1105 of this title, amended sections 3301 and 3302(d) (1) of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 1101 of this title.

Definition of "title XV", referred to in the text, see section 1400*l* of this title and note thereunder.

§ 1400p. Covered period

In the case of any individual, the covered period referred to in sections 1400m and 1400n of this title is the period—

(1) beginning on whichever of the following is the later:

(A) the 15th day after March 24, 1961, or

(B) the day after the date on which any applicable agreement is entered into under section 1400q or 1400r of this title, and

(2) ending—

(A) on March 31, 1962, or

(B) on June 30, 1962, in the case of an individual who (for a week beginning before April 1, 1962) had a week with respect to which temporary extended unemployment com-

pensation was payable under section 1400m of this title, reimbursement was payable under section 1400n of this title, or reimbursement would have been so payable but for the fact that the unemployment compensation was payable under title XV.

Pub.L. 87–6, § 6, Mar. 24, 1961, 75 Stat. 10.

Historical Note

References in Text. Definition of "title XV", referred to in the text, see section 1400*l* of this title and note thereunder.

§ 1400q. Agreements with States—Payments of temporary unemployment compensation; reimbursement

(a) The Secretary is authorized on behalf of the United States to enter into an agreement with a State, or with the agency administering the State law, which shall include the provisions described in paragraphs (1) and (2) or in either of them:

(1) Such State agency will make, as agent of the United States, payments of temporary extended unemployment compensation to the individuals referred to in section 1400m of this title on the basis provided in this subchapter and will otherwise cooperate with the Secretary and with other State agencies in making payments of temporary extended unemployment compensation under this subchapter.

(2) The United States will reimburse the State for State unemployment compensation paid under the conditions specified in section 1400n of this title.

Except as provided in section 1400r of this title, temporary extended unemployment compensation shall be paid, and reimbursement under section 1400n of this title shall be made, only pursuant to an agreement entered into under this section.

Amendment, suspension, or termination of agreement

(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

Denial or reduction of State benefits

(c) Any agreement under this subchapter shall provide that regular unemployment compensation otherwise payable to any individual will not be denied or reduced for any week by reason of any right to temporary extended unemployment compensation under this subchapter.

Review of determinations by State agencies

(d) Any determination by a State agency with respect to entitlement to temporary extended unemployment compensation pursuant

to an agreement under this subchapter shall be subject to review in the same manner and to the same extent as determinations under the State law, and only in such manner and to such extent.

Reduction of compensation by certain retirement pensions and annuities

(e) (1) Any agreement under this subchapter shall provide that temporary extended unemployment compensation payable to an individual with respect to a week shall be reduced, under regulations prescribed by the Secretary, by any amount received with respect to such week as a retirement pension or annuity under a public or private retirement plan or system provided, or contributed to, by any base period employer. An amount received with respect to a period other than a week shall be prorated by weeks. No reduction shall be made under this paragraph for (A) any retirement pension or annuity received by reason of disability, or (B) any amount received under title II of the Social Security Act.

(2) For purposes of this subsection, the term "base period employer" means, in the case of any individual, any person who paid such individual any remuneration for employment which was taken into account in computing the amount or duration of any State unemployment compensation which was payable to such individual at any time during the compensation period.

(3) For purposes of section 1400m(c) of this title, so much of any State law as provides a disqualification for, or a reduction in, State unemployment compensation for amounts received as retirement pensions or annuities (or for amounts received under title II of the Social Security Act) shall be deemed to be inconsistent with the provisions of this subchapter relating to the payment of temporary extended unemployment compensation. Pub.L. 87–6, § 7, Mar. 24, 1961, 75 Stat. 10.

Historical Note

References in Text. "Subchapter", referred to in the text, reads "Act" in the original, meaning Pub.L. 87–6, which enacted this subchapter and section 1105 of this title, amended sections 3301 and 3302(d) (1) of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 1101 of this title.

Title II of the Social Security Act, referred to in subsec. (e) (1), (3), is classified to subchapter II of chapter 7 of this title.

§ 1400r. Veterans and Federal employees—Extension of agreement with State

(a) For the purpose of paying temporary extended unemployment compensation to individuals who have, after June 30, 1960, exhausted their rights to unemployment compensation under title XV in a State with which there is no agreement under section 1400q of this title which applies with respect to the weeks of unemployment concerned, the Secretary may extend any existing agreement with such State. Any such extension shall apply only to weeks of unemployment be-

ginning after such extension is made. For the purposes of this subchapter, any such extension shall be treated as an agreement entered into under this subchapter.

Employees in Virgin Islands

(b) For the purpose of paying temporary extended unemployment compensation to individuals who have, after June 30, 1960, exhausted their rights to unemployment compensation under title XV in the Virgin Islands, the Secretary may utilize the personnel and facilities of the agency in the Virgin Islands cooperating with the United States Employment Service under the Act of June 6, 1933, may delegate to officials of such agency any authority granted to him by this subchapter whenever the Secretary determines such delegation to be necessary in carrying out the purposes of this subchapter, and may allocate or transfer funds or otherwise pay or reimburse such agency for the total cost of the temporary extended unemployment compensation paid under this subchapter and for expenses incurred in carrying out the purposes of this subchapter.

Review of denial of benefits

(c) Any individual referred to in subsection (b) of this section whose claim for temporary extended unemployment compensation has been denied shall be entitled to a fair hearing and review as provided in section 1363(c) of this title. Pub.L. 87–6, § 8, Mar. 24, 1961, 75 Stat. 12.

Historical Note

References in Text. "Subchapter", referred to in the text, reads "Act" in the original meaning Pub.L. 87-6, which enacted this subchapter and section 1105 of this title, amended sections 3301 and 3302(d) (1) of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 1101 of this title.

Definition of "title XV", referred to in the text, see section 1400*l* of this title and note thereunder.

Act of June 6, 1933, referred to in subsec. (b), means Act June 6, 1933, c. 49, 48 Stat. 113, which is classified to sections 49–49c, 49d, 49g, 49h, 49j, and 49k of Title 29, Labor.

§ 1400s. False statements or representations; penalties; recovery of overpayments

(a) Whoever makes a false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase for himself or for any other individual any payment under this subchapter shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(b) (1) If a State agency or the Secretary, as the case may be, or a court of competent jurisdiction, finds that any person—

(A) has made, or has caused to be made by another, a false statement or representation of a material fact knowing it to be false, or has knowingly failed, or caused another to fail, to disclose a material fact, and

(B) as a result of such action has received any payment under this subchapter to which he was not entitled,

such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be. In lieu of requiring the repayment of any amount under this paragraph, the State agency or the Secretary, as the case may be, may recover such amount by deductions from any compensation payable to such person under this subchapter. Any such finding by a State agency or the Secretary, as the case may be, may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under sections 1400q(d) and 1400r(c) of this title.

(2) Any amount repaid to a State agency under paragraph (1) shall be deposited into the fund from which payment was made. Any amount repaid to the Secretary under paragraph (1) shall be returned to the Treasury and credited to the current applicable appropriation, fund, or account from which payment was made. Pub.L. 87–6, § 9, Mar. 24, 1961, 75 Stat. 12.

Historical Note

References in Text. "Subchapter", referred to in the text, reads "Act" in the original, meaning Pub.L. 87–6, which enacted this subchapter and section 1105 of this title, amended sections 3301 and 3302 (d) (1) of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 1101 of this title.

Notes of Decisions

1. Separate offenses

Each filing of false claim for unemployment compensation constituted separate offense and therefore information charging defendant with filing ten separate claim forms in separate counts was not duplicitous, although defendant allegedly filed new claim as soon as payments had stopped under previous one. U. S. v. Robbins, D.C.N.Y.1963, 223 F.Supp. 728.

§ 1400t. Information from State agencies

The agency administering the State law shall furnish to the Secretary such information as he may find necessary or appropriate in carrying out the provisions of this subchapter. Such information shall include data (which may be procured on a sampling basis) relating to the personal characteristics, family situation, employment background, and experience under this subchapter of individuals found to be entitled to temporary extended unemployment compensation. Pub.L. 87–6, § 10, Mar. 24, 1961, 75 Stat. 13.

Historical Note

References in Text. "Subchapter", referred to in the text, reads "Act" in the original, meaning Pub.L. 87–6, which enacted this subchapter and section 1105 of this title, amended sections 3301 and 3302(d) (1) of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 1101 of this title.

§ 1400u. Payments to States—Payment on calendar month basis

(a) (1) Except as provided in paragraph (2), there shall be paid to each State which has an agreement under this subchapter, either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this subchapter for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

(2) Any payments to a State pursuant to section 1400n of this title shall be by way of reimbursement, and shall be used only for the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

Certification to Secretary of Treasury

(b) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State which has an agreement under this subchapter sums payable to such State under paragraphs (1) and (2) of subsection (a) of this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, from the Federal extended compensation account. Sums payable to a State under paragraph (2) of subsection (a) of this section shall be paid by transfers from the Federal extended compensation account to the account of such State in the Unemployment Trust Fund.

Use of money paid to a State

(c) All money paid a State under this subchapter shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Treasury and credited to current applicable appropriations, funds, or accounts from which payments to States under this subchapter may be made.

Surety bonds

(d) An agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in its performance, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this subchapter.

Liability of certifying officers

(e) No person designated pursuant to an agreement under this subchapter as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to the payment of any compensation certified by him under this subchapter.

Liability of disbursing officers

(f) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this subchapter if it was based upon a voucher signed by a certifying officer designated as provided in subsection (e) of this section.

Costs of administration

(g) For the purpose of payments made to a State under title III of the Social Security Act, administration by the State agency of such State pursuant to an agreement under this subchapter shall be deemed to be a part of the administration of the State law. Pub.L. 87–6, § 11, Mar. 24, 1961, 75 Stat. 13.

Historical Note

References in Text. "Subchapter", referred to in the text, reads "Act" in the original, meaning Pub.L. 87–6, which enacted this subchapter and section 1105 of this title, amended sections 3301 and 3302(d) (1) of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 1101 of this title.

Title III of the Social Security Act, referred to in subsec. (g), is classified to subchapter III of chapter 7 of this title.

§ 1400v. Rules and regulations

The Secretary is authorized to make such rules and regulations as may be necessary to carry out the provisions of this subchapter. Such regulations shall include regulations prescribing the method of computing an average weekly benefit amount where there is more than one weekly benefit amount payable in a period. Pub.L. 87–6, § 12, Mar. 24, 1961, 75 Stat. 14.

Historical Note

References in Text. "Subchapter", referred to in the text, reads "Act" in the original, meaning Pub.L. 87–6, which enacted this subchapter and section 1105 of this title, amended sections 3301 and 3302(d) (1) of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 1101 of this title.

CHAPTER 8.—LOW-RENT HOUSING

Sec.

Sec.

§ 1401. Declaration of policy

It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation. In the development of low-rent housing it shall be the policy of the United States to make adequate provision for larger families and for families consisting of elderly persons. It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the Authority), with due consideration to accomplishing the objectives of this chapter while effecting economies. Sept. 1, 1937, c. 896, § 1, 50 Stat. 888; July 15, 1949, c. 338, Title III, § 307(a), 63 Stat. 429; Sept. 23, 1959, Pub.L. 86–372, Title V, § 501, 73 Stat. 679.

Historical Note

1959 Amendment. Pub.L. 86–372 provided that in the development of low-rent housing it shall be the policy of the United States to make adequate provision for larger families and for families consisting of elderly persons, and that it is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program.

1949 Amendment. Act July 15, 1949 substituted "urban and rural nonfarm" for "rural or urban communities".

Equal Opportunity in Housing. Executive order relating to equal opportunity in housing, see Ex.Ord.No.11063, Nov. 21, 1962, 27 F.R. 11527, set out as a note under section 1982 of this title.

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550. See, also, Pub.L. 86–372, 1959 U.S.Code Cong. and Adm.News, p. 2844.

Cross References

Veterans, aid in housing accommodations, see section 1738 et seq. of Title 12, Banks and Banking.

Notes of Decisions

Library references
Health ⇐32.
C.J.S. Health § 54.

1. Constitutionality

This chapter was properly enacted under provision of U.S.C.A.Const. art. 1, § 8, cl. 1 authorizing Congress to provide for the general welfare of the United States. City of Cleveland v. U. S., 1945, 65 S.Ct. 280, 323 U.S. 329, 89 L.Ed. 274.

This chapter and the Housing Authorities Law, Gen.Laws, Acts 3483–3485, are constitutional. Housing Authority of City of Eureka v. Superior Court in and for Humboldt County, 1950, 219 P.2d 457, 35 Cal.2d 550.

This chapter is valid and constitutional. 1953, 41 Op.Atty.Gen. May 15.

2. Purpose

The purpose of this chapter is to make certain loans to various local housing authorities throughout United States, or in effect to provide for annual subsidies for creation of housing facilities which could not otherwise be constructed by private capital for people in very low income groups. Favors v. Randall, D.C. Pa.1941, 40 F.Supp. 743.

The declared purpose and policy of legislature in enacting this chapter is slum clearance and substitution of low-rent, safe and sanitary dwellings. Kleiber v. City and County of San Francisco, 1941, 117 P.2d 657, 18 Cal.2d 718.

The purpose of this chapter is the elimination of slum conditions and the providing of safe and sanitary dwelling accommodations for persons of low income. Housing Authority of City of Dallas v. Higginbotham, 1940, 143 S.W.2d 79, 135 Tex. 158, 130 A.L.R. 1053, certified questions conformed to 143 S.W.2d 95.

3. Generally

It is common knowledge that unemployment had reached a crisis of nation-wide proportions at time of enactment of this chapter. Ryan v. Housing Authority of City of Newark, 1940, 15 A.2d 647, 125 N.J.L. 336.

The courts have no concern with matters of policy as reflected in slum clearance projects, except to say that right of legislation rests upon principle of general comfort, health, and well-being of the people, limited by inhibitions of Constitution and police power, and in relation to municipal corporations, by the statutes. Douthitt v. City of Covington, 1940, 144 S.W.2d 1025, 284 Ky. 382.

§ 1402. Definitions

When used in this chapter—

Low-rent housing; eligibility; continued occupancy

(1) The term "low-rent housing" means decent, safe, and sanitary dwellings within the financial reach of families of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing shall be available solely for families of low income. Income limits for occupancy and rents shall be fixed by the public housing agency and approved by the Administration after taking into consideration (A) the family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the family, and (B) the economic factors which affect the financial stability and solvency of the project.

Families of low income, families, and elderly families

(2) The term "families of low income" means families (including elderly and displaced families) who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use. The term "families" includes families consisting of a single person in the case of elderly families and displaced families, and includes a single person who is handicapped within the meaning of section 1701q of Title 12 or who is the remaining member of a tenant family. The term "elderly families" means families whose heads (or their spouses), or whose sole members, have attained the age at which an individual may elect to receive an old age benefit under title II of the Social Security Act, or who are under a disability as defined in section 423 of this title. The term "displaced families" means families displaced by urban renewal or other governmental action.

Slum

(3) The term "slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

Slum clearance

(4) The term "slum clearance" means the demolition and removal of buildings from any slum area.

Development; office space for renewal functions

(5) The term "development" means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-rent housing project. The term

"development cost" shall comprise the costs incurred by a public housing agency in such undertakings and their necessary financing (including the payment of carrying charges, but not beyond the point of physical completion), and in otherwise carrying out the development of such project. Construction activity in connection with a low-rent housing project may be confined to the reconstruction, remodeling, or repair of existing buildings. In cases where the public housing agency is also the local public agency for the purposes of sections 1450–1452, 1453–1455, 1456–1460, and 1462 of this title, or in cases where the public housing agency and the local public agency for purposes of such sections operate under a combined central administrative office staff, an administration building included in a low-rent housing project to provide central administrative office facilities may also include sufficient facilities for the administration of the functions of such local public agency, and in such case, the Administration shall require that an economic rent shall be charged for the facilities in such building which are used for the administration of the functions of such local public agency and shall be paid from funds derived from sources other than the low-rent housing projects of such public housing agency.

Administration

(6) The term "administration" means any or all undertakings necessary for management, operation, maintenance, or financing, in connection with a low-rent-housing or slum-clearance project, subsequent to physical completion.

Federal project

(7) The term "Federal project" means any project owned or administered by the Administration.

Acquisition cost

(8) The term "acquisition cost" means the amount prudently required to be expended by a public housing agency in acquiring a low-rent-housing or slum-clearance project.

Non-dwelling facilities

(9) The term "non-dwelling facilities" shall include site development, improvements and facilities located outside building walls (including streets, sidewalks, and sanitary, utility, and other facilities).

Going Federal rate

(10) The term "going Federal rate" means the annual rate of interest (or, if there shall be two or more such rates of interest, the highest thereof) specified in the most recently issued bonds of the Federal Government having a maturity of ten years or more, determined, in the case of loans or annual contributions, respectively, at the date of Presidential approval of the contract pursuant to which such loans or contributions are made: *Provided*, That with respect to any loans or annual contributions made pursuant to a contract ap-

proved by the President after the first annual rate has been specified as provided in this proviso, the term "going Federal rate" means the annual rate of interest which the Secretary of the Treasury shall specify as applicable to the six-month period (beginning with the six-month period ending December 31, 1953) during which the contract is approved by the President, which applicable rate for each six-month period shall be determined by the Secretary of the Treasury by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month of May or the month of November, as the case may be, next preceding such six-month period, on all outstanding marketable obligations of the United States having a maturity date of fifteen or more years from the first day of such month of May or November, and by adjusting such estimated average annual yield to the nearest one-eighth of one per centum: *And provided further*, That for the purposes of this chapter, the going Federal rate shall be deemed to be not less than 2½ per centum.

Public housing agency

(11) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (excluding the Administration), which is authorized to engage in the development or administration of low-rent housing or slum clearance. The Administration shall enter into contracts for financial assistance with a State or State agency where such State or State agency makes application for such assistance for an eligible project which, under the applicable laws of the State, is to be developed and administered by such State or State agency.

State

(12) The term "State" includes the States of the Union, the District of Columbia, and the Territories, dependencies, and possessions of the United States.

Public Housing Administration

(13) The term "Administration" means the Public Housing Administration.

Initiated

(14) The term "initiated" when used in reference to the date on which a project was initiated refers to the date of the first contract for financial assistance in respect to such project entered into by the Administration and the public housing agency. Sept. 1, 1937, c. 896, § 2, 50 Stat. 888; 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; July 15, 1949, c. 338, Title III, §§ 302(b), 304 (c) (i), 306, 307(b), 63 Stat. 424, 425, 429; Oct. 26, 1951, c. 577, § 1, 65 Stat. 647; June 30, 1953, c. 170, § 24(c), 67 Stat. 128; Aug. 7, 1956, c. 1029, Title IV, § 404(a), 70 Stat. 1104; July 12, 1957, Pub.L. 85–104, Title III, § 307, Title IV, § 401(a), 71 Stat. 301; Sept. 23, 1959, Pub.

L. 86–372, Title V, §§ 502, 503(a), 504, 73 Stat. 680; June 30, 1961, Pub.L. 87–70, Title II, § 202, 75 Stat. 163; Sept. 2, 1964, Pub.L. 88–560, Title II, § 203(d), Title IV, § 401(a), 78 Stat. 784, 794.

Historical Note

References in Text. Title II of the Social Security Act, referred to in par. (2), is classified to section 401 et seq. of this title.

1964 Amendment. Par. (2). Pub.L. 88–560 redefined "families of low income" to include elderly and displaced families, "families" by substituting "includes families consisting of a single person in the case of elderly families and displaced families, and includes" for "means families consisting of two or more persons, a single person who has attained retirement age as defined in section 416(a) of this title, or who is under a disability as defined in section 423 of this title, or the", "elderly families" by including "sole members", and defined "displaced families."

1961 Amendment. Par. (2). Pub.L. 87–70 eliminated the words "has attained the age of fifty and" which preceded "is under a disability" in two instances.

Par. (14). Pub.L. 87–70 redesignated former par. (15) as (14) and eliminated former par. (14) which defined the terms "veteran" and "serviceman."

Par. (15). Pub.L. 87–70 redesignated former par. (15) as (14).

1959 Amendment. Par. (1). Pub.L. 86–372, § 503(a), substituted provisions requiring income limits for occupancy and rents to be fixed by the public housing agency and approved by the Authority after taking into consideration the family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the family, and the economic factors which affect the financial stability and solvency of the project, for provisions which restricted dwellings to families whose net annual income at the time of admission, less an exemption of (a) $100 for each adult dependent member of the family having no income and for each minor (other than the head of the family and his spouse), and (b) not to exceed $600 of the income of each member of the family other than the principal wage earner, does not exceed five times the annual rental (including the value or cost to them of water, electricity, gas, other heating and cooking fuels, and other utilities) of the dwellings to be furnished such families, and eliminated provisions which granted certain exemptions for continued occupancy.

Par. (2). Pub.L. 86–372, § 504, substituted "a single person who has attained retirement age as defined in section 416 (a) of this title or who has attained the age of fifty and is under a disability as defined in section 423 of this title" for "a single person sixty-five years of age or over", and "the head of which (or his spouse) has attained retirement age as defined in section 416(a) of this title or has attained the age of fifty and is under a disability as defined in section 423 of this title" for "the head of which (or his spouse) is sixty-five years of age or over."

Par. (5). Pub.L. 86–372, § 502, added provisions relating to administrative office facilities in cases where the public housing agency and the local public agency operate under a combined central administrative office staff.

1957 Amendment. Par. (1). Pub.L. 85–104, § 401(a), for purposes of availability of low-rent housing, provided additional exemptions of up to $100 for each adult dependent with no income, and up to $600 of the income of each member of the family other than the principal wage earner, and for continued occupancy of low-rent housing, provided additional exemptions of $100 for each adult member of the family having no income, and up to $600 of the income of any other adult member of the family other than the principal wage earner.

Par. (5). Pub.L. 85–104, § 307, added provisions that where public housing agency is also the local public agency for purposes of section 1450 et seq. of this title, public housing administration building may include facilities for administration of its functions as such local public agency at a rent payable from sources other than the low-rent housing projects of such agency.

1956 Amendment. Par. (2). Act Aug. 7, 1956, added definitions of "families" and "elderly families".

1953 Amendment. Par. (10). Act June 30, 1953 amended the term "going Federal rate" so that the minimum base interest rate would:

1. reflect market yields on Government bonds, instead of interest rates specified

in the bonds when issued with a minimum of 2½ per cent;

2. reflect the yield on obligations of the United States having 15 years or more to run to maturity, instead of the rate on a bond which could have a maturity as low as 10 years;

3. reflect the average yield during a full 1-month period on all outstanding obligations of the United States having 15 years or more to run to maturity, instead of the rate on a single recent issue of bonds;

4. retain the base rate, once it was specified by the Secretary of the Treasury, instead of varying from month to month as new bonds are issued; and

5. be adjusted to the nearest one-eighth of 1 per cent.

1951 Amendment. Par. (14). Act Oct. 26, 1951 redefined veteran and serviceman to include Korean veterans.

1949 Amendment. Par. (1). Act July 15, 1949, § 306 substituted the present second, third, and fourth sentences for former second sentence prescribing the eligibility for dwellings in low-rent housing.

Par. (5) amended by Act July 15, 1949, § 304(i), added definition of "development cost".

Par. (10). Act July 15, 1949, § 304(c), redefined "going Federal rate".

Par. (11). Act July 15, 1949, § 307(b)(1), added second sentence.

Par. (14). Act July 15, 1949, § 302(b), added par. (14).

Par. (15). Act July 15, 1949, § 307(b)(2), added par. (15) defining "initiated".

Purpose of 1957 Amendment. Pub.L. 85-104, § 401(a), provided in part that the amendment of par. (1) of this section was "In order to enable low-rent housing to serve more effectively the needs of large families of low income".

Transfer of Functions. "Authority" was changed to "Administration" in pars. (1), (5), (7), (11), and (13) and "Public Housing Administration" was substituted for "United States Housing Authority created by section 1403 of this title" in par. (13) by 1947 Reorg.Plan No. 3, and set out in note under former section 1403 of this title.

For prior transfers of functions, see notes under former section 1403 of this title.

The word "Authority" was used in the amendment of this section by Act July 15, 1949, Pub.L. 85-104 and Pub.L. 86-372, without reference to 1947 Reorg.Plan No. 3, which substituted "Administration" for "Authority".

Active Military or Naval Service. Proc. No. 3080, Jan. 5, 1955, 20 F.R. 173, fixed Feb. 1, 1955, as the date prior to which persons must have served in the active military or naval service in order that such persons come within the meaning of the terms "veteran" and "serviceman," contained in former par. (14) of this section, by reason of service on or after June 27, 1950.

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550. See, also, Act Oct. 26, 1951, 1951 U.S.Code Cong.Service, p. 2452; Act June 30, 1953, 1953 U.S.Code Cong. and Adm.News, p. 1806; Act Aug. 7, 1956, 1956 U.S.Code Cong. and Adm.News, p. 4509; Pub.L. 85-104, 1957 U.S.Code Cong. and Adm. News, p. 1319; Pub.L. 86-372, 1959 U.S. Code Cong. and Adm.News, p. 2844; Pub. L. 87-70, 1961 U.S.Code Cong. and Adm. News, p. 1923.

Notes of Decisions

1. Low Income

Term "low income" as used in New York Constitution and McKinney's N.Y. Public Housing Law means beneath the usual or remunerative rate or amount as low wages. Cheley v. Buffalo Municipal Housing Authority, 1960, 206 N.Y.S.2d 158, 24 Misc.2d 598.

§ 1403. United States Housing Authority

Historical Note

Codification. Section, Act Sept. 1, 1937, c. 896, § 3, 50 Stat. 889, related to the creation of the United States Housing Authority and the appointment and compensation of the Administrator. The Authority was transferred to the Housing and Home Finance Agency and its name changed to the Public Housing Administration by 1947 Reorg.Plan No. 3, set out as a note hereunder. The office

of the Administrator was abolished and his functions and duties transferred to the Public Housing Commissioner by 1947 Reorg.Plan No. 3.

Transfer of Functions. The United States Housing Authority was consolidated with other agencies into the Housing and Home Finance Agency and the name of the Authority was changed to Public Housing Administration by 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, partly set out below. The Plan abolished the office of Administrator of the United States Housing Authority and transferred its functions to the Public Housing Commissioner provided for by the Plan. It also transferred to the Housing and Home Finance Administrator the functions of the Federal Works Administrator with respect to the United States Housing Authority. The Plan is set out in its entirety in note under section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

United States Housing Authority and its functions and personnel were transferred to Federal Works Agency, and functions of the Secretary of the Interior relating to administration thereof were transferred to Federal Works Administrator by 1939 Reorg.Plan No. I, §§ 301, 304, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1427, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See sections 307–310 of the plan for provisions relating to transfer of records, property, funds, and personnel. By Ex.Ord.No.9070, Feb. 24, 1942, 7 F.R. 1529, all powers, functions, and duties of Federal Works Administrator were transferred during World War II to the Federal Public Housing Authority within the National Housing Agency, under the National Housing Administrator. The National Housing Agency was dissolved upon creation of the Housing and Home Finance Agency by 1947 Reorg.Plan No. 3, set out below.

Compensation of Commissioner, Public Housing Administration. Annual basic compensation of Commissioner as $20,000, see section 2205(a) (26) of Title 5, Executive Departments and Government Officers and Employees.

REORGANIZATION PLAN NO. 3 OF 1947

12 F.R. 4981, 61 Stat. 954. Eff. July 27, 1947, amended Aug. 10, 1948, c. 832, Title V, § 510(a), 62 Stat. 1283; July 31, 1956, c. 804, Title I, § 106, 70 Stat. 737.

The sections of 1947 Reorg.Plan No. 3 set out below related to the creation of the Housing and Home Finance Agency, the transfer thereto, and consolidation therein, of the United States Housing Authority and its functions, the change of name of the latter to the Public Housing Administration, the creation of the office of, and prescription of the functions of, the Public Housing Commissioner, and the abolishment of the office of Administrator of the United States Housing Authority.

Section 1. Housing and Home Finance Agency. The Home Owners' Loan Corporation, the Federal Savings and Loan Insurance Corporation, the Federal Housing Administration, the United States Housing Authority, the Defense Homes Corporation, and the United States Housing Corporation, together with their respective functions, the functions of the Federal Home Loan Bank Board, and the other functions transferred by this plan, are consolidated, subject to the provisions of sections 2 to 5, inclusive, hereof, into an agency which shall be known as the Housing and Home Finance Agency. There shall be in said Agency constituent agencies which shall be known as the Home Loan Bank Board, the Federal Housing Administration, and the Public Housing Administration.

Sec. 4. Public Housing Administration. The Public Housing Administration shall be headed by a Public Housing Commissioner who shall be appointed by the President, by and with the advice and consent of the Senate, and receive compensation at the rate of $20,000 per annum. There are transferred to said Commissioner the functions—

(a) Of the Administrator of the United States Housing Authority (which agency shall hereafter be administered and known as the Public Housing Administration);

(b) Of the National Housing Agency with respect to non-farm housing projects and other properties remaining under its jurisdiction pursuant to section 2(a) (3) of the Farmers' Home Administration Act of 1946 (Public Law 731, Seventy-ninth Congress, approved August 14, 1946); and

(c) With respect to the liquidation and dissolution of the Defense Homes Corporation.

Sec. 9. Abolitions. The Federal Home Loan Bank Board, the Board of Directors of the Home Owners' Loan Corporation, and the Board of Trustees of the

Federal Savings and Loan Insurance Corporation, together with the offices of the members of said boards, the office of Federal Housing Administrator, and the office of Administrator of the United States Housing Authority, are abolished.

Cross References

Additional powers and duties of Public Housing Commissioner, see section 1701c of Title 12, Banks and Banking.

Notes of Decisions

1. Liability of agency

It was not improbable that the courts would hold the United States Housing Authority liable for negligence of its agents or employees. 1938, 39 Op.Atty. Gen. 559.

2. Supervision

The term "general supervision" in former section 1403 of this title insofar as such supervision was not expressly subordinated to approval by the President, implied more than mere power to advise and suggest—it included power to superintend and oversee the activities of the Housing Authority. 1938, 39 Op. Atty.Gen. 570.

The Secretary of the Interior was empowered by former section 1403(a) of this title to superintend and oversee the activities of the Housing Authority subject, however, to the requirement in section 1406(d) that no annual contribution, grant, or loan, and no contract therefor, shall be undertaken except with approval of the President. Id.

3. Subcontractor's claim

Where Federal Public Housing Authority agreed to pay contractor the full consideration for performance of entire work of removing 900 housing units and subsequent resurrection thereof, authorizing contractor to employ subcontractors to do part of work, there was no privity of contract between a subcontractor employed by contractor and Federal Government which would authorize subcontractor to maintain action against Government for money allegedly due him from contractor alone, notwithstanding that base contract was a cost plus fixed fee contract. Nickel v. Pollia, C.A.Wyo. 1950, 179 F.2d 160.

§ 1404. Powers of Public Housing Commissioner; transfer of property—Appointment and compensation of employees

(a) The Commissioner is authorized, subject to the civil-service laws and the Classification Act of 1949, as amended, to appoint and fix the compensation of such employees as may be necessary for the proper performance of the duties of the Administration under this chapter.

(b) Omitted.

Assistance of officers and agencies

(c) The Commissioner may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, equipment, and information of any agency of the Federal, State, or local governments as he finds helpful in the performance of the duties of the Public Housing Administration. In connection with the utilization of such services, the Administration may make reasonable payments for necessary traveling and other expenses.

Transfer of property to Administration

(d) The President may at any time in his discretion transfer to the Public Housing Administration any right, interest, or title held by any department or agency of the Federal Government in any housing or slum-clearance projects (constructed or in process of construction on September 1, 1937), any assets, contracts, records, libraries, research materials, and other property held in connection with any such housing or slum-clearance projects or activities, any unexpended balance of funds allocated to such department or agency for the development, administration, or assistance of any housing or slum-clearance projects or activities, and any employees who have been engaged in work connected with housing or slum clearance. The Public Housing Administration may continue any or all activities undertaken in connection with projects so transferred, subject to the provisions of this chapter. Sept. 1, 1937, c. 896, § 4, 50 Stat. 889; 1947 Reorg.Plan No. 3, §§ 1, 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972.

Library references: Health ⇐7(3); C.J.S. Health § 9 et seq.

Historical Note

References in Text. The civil-service laws referred to in subsec. (a), are classified generally to Title 5, Executive Departments and Government Officers and Employees.

The Classification Act of 1949, referred to in subsec. (a), is classified to chapter 21 of Title 5.

Codification. Provisions of subsec. (a), which authorized the Commissioner to appoint officers, attorneys and experts without regard to the civil-service laws, was omitted since the employees referred to are now in the classified civil service and subject to the applicable compensation schedules.

Subsec. (b), which required Senate confirmation of appointments made under this chapter the annual salary of which was in excess of $7,500 per annum, was omitted since the positions are now in the classified civil service.

The authority for covering excepted positions into the classified civil service was given the President by section 631a of Title 5, Executive Departments and Government Officers and Employees. By Executive Order 8743, Apr. 25, 1941, set out as a note under section 631a of Title 5, the President exercised this authority with respect to many previously excepted positions.

For positions now covered by the Classification Act of 1949, see sections 1081 and 1082 of Title 5. For the power of the Civil Service Commission to determine the applicability of those sections to specific positions, see section 1083 of Title 5.

1949 Amendment. Subsec. (a). Act Oct. 28, 1949 substituted "Classification Act of 1949" for "Classification Act of 1923."

Transfer of Functions. The United States Housing Authority was consolidated with other agencies into the Housing and Home Finance Agency, the name of the Authority was changed to Public Housing Administration, the office of Administrator of the United States Housing Authority was abolished and its functions transferred to the Public Housing Commissioner, by 1947 Reorg.Plan No. 3, the pertinent provisions of which are set out in note under former section 1403 of this title. See, also, notes under that section for prior transfers of functions.

Ex.Ord.No.7732, Oct. 27, 1937, 2 F.R. 2324, 44 C.F.R. 201.11, eff. Nov. 1, 1937, transferred to the United States Housing Authority all right, interest, and title held by the Federal Emergency Administration of Public Works in any housing or slum-clearance projects constructed or in the process of construction on Sept 1, 1937. See note under former section 1403 of this title.

Cross References

Additional powers and duties of Public Housing Commissioner, see section 1701c of Title 12, Banks and Banking.

Appointment of officers and employees, see section 1404a of this title.

Library membership, utilization of funds for, see section 1701c(c) of Title 12.

Uncompensated advisers serving away from home, expenses of, see section 1406b of this title.

§ 1404a. Public Housing Administration; right to sue; employment of personnel; delegation of functions; rules and regulations; expenses

The Public Housing Administration shall sue and be sued only with respect to its functions under this chapter, and sections 1501–1505 of this title. The Public Housing Commissioner may appoint such officers and employees as he may find necessary, which appointments, notwithstanding the provisions of any other law, after August 10, 1948, shall be made under this section, and shall be subject to the civil-service laws and the Classification Act of 1949, as amended; delegate any of his functions and powers to such officers, agents, or employees of the Public Housing Administration as he may designate; and make such rules and regulations as he may find necessary to carry out his functions, powers, and duties. Funds made available for carrying out the functions, powers, and duties of the Administration (including appropriations therefor, which are authorized) shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Administration. Notwithstanding any other provisions of law except provisions of law enacted after August 10, 1948 expressly in limitation hereof, the Public Housing Administration, or any State or local public agency administering a low-rent housing project assisted pursuant to this chapter or sections 1501–1505 of this title, shall continue to have the right to maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action is authorized by the statute or regulations under which such housing accommodations are administered, and, in determining net income for the purposes of tenant eligibility with respect to low-rent housing projects assisted pursuant to this chapter and sections 1501–1505 of this title, the Public Housing Administration is authorized, where it finds such action equitable and in the public interest, to exclude amounts or portions thereof paid by the United States Government for disability or death occurring in connection with military service. Aug. 10, 1948, c. 832, Title V, § 502(b), 62 Stat. 1284; Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972.

Historical Note

References in Text. The "civil-service laws", referred to in the text, are classified generally to Title 5, Executive Departments and Government Officers and Employees.

The Classification Act of 1949, as amended, referred to in the text, is classified to chapter 21 of Title 5.

Codification. Section is from subsec. (b) of section 502 of Act Aug. 10, 1948. Subsecs. (a) and (c) of section 502 are set out as section 1701c of Title 12, Banks and Banking.

This section was enacted as a part of the Housing Act of 1948 and not as a part of the United States Housing Act of 1937 which comprises this chapter.

1949 Amendment. Act Oct. 28, 1949 substituted "Classification Act of 1949" for "Classification Act of 1923".

Legislative History: For legislative history and purpose of Act Aug. 10, 1948, see 1948 U.S.Code Cong.Service, p. 2351.

Cross References

Additional powers and duties of Public Housing Commissioner, see section 1701c of Title 12, Banks and Banking.

Library membership, utilization of funds for, see section 1701c(c) of Title 12

Notes of Decisions

1. Suits by or against

Mere fact that Federal Public Housing Administration, as arm of United States, delegated authority in operation of housing project to City Housing Authority did not change or permit evasion of responsibility of United States in operation of Authority. Schetter v. Housing Authority of City of Erie, D.C.Pa.1955, 132 F.Supp. 149.

Where instrument providing for operation of housing project made between City Housing Authority and Federal Housing Administration, made the Authority an instrumentality of United States, law of landlord and tenant had no application to terms of agreement in determining liability of United States or Authority for death of two children caused by exploding hot water tank in project. Id.

Public Housing Administration, which administers duties of the Administrator of the United States Housing Authority, a government-owned corporation permitted to sue and be sued, administers duties of the National Housing Agency in a separate capacity, and integration of the United States Housing Authority and the National Housing Agency in the Public Housing Administration, did not waive Public Housing Administration's immunity from suit in connection with functions and duties of the National Housing Agency. Van Deman v. U. S., D.C.1948, 119 F.Supp. 599.

Acts and duties of Director of Region III of the Public Housing Administration in selling defense housing constructed under provisions of section 1521 et seq. of this title were not ministerial, but were executive and discretionary in character and for which he could not be sued in absence of consent of Congress. Id.

Action by tenants of defense housing project to set aside conveyance of project by Public Housing Administration to local housing authority of city on ground that conditions prescribed by statute as a prerequisite to such disposition of defense housing projects had not been met was not authorized by this section and hence could not be maintained for want of express consent by the United States to be sued. Breen v. Housing Authority of City of Pittsburgh, D.C. Pa.1954, 119 F.Supp. 320.

In action for injunction against performance of municipal contracts made in conformity with this chapter, propriety of the procedure was concluded by prior decision holding chapter constitutional, though plaintiff in the instant case was not attacking its constitutionality. Kleiber v. City and County of San Francisco, 1941, 117 P.2d 657, 18 Cal.2d 718.

§ 1405. Same; miscellaneous provisions—Location of offices

(a) The principal office of the Administration shall be in the District of Columbia, but it may establish branch offices or agencies in any State, and may exercise any of its powers at any place within the United States. The Administration may, by one or more of its officers or employees or by such agents or agencies as it may designate, conduct hearings or negotiations at any place.

Suits by or against

(b) The Administration shall sue and be sued in its own name, and shall be represented in all litigated matters by the Attorney General or such attorney or attorneys as he may designate.

Seal

(c) The Administration shall have an official seal, which shall be judicially noticed.

Mail franchise

(d) The Administration shall be granted the free use of the mails in the same manner as the executive departments of the Government.

Exemption from taxation

(e) The Administration, including but not limited to its franchise, capital, reserves, surplus, loans, income, assets, and property of any kind, shall be exempt from all taxation now or hereafter imposed by the United States or by any State, county, municipality, or local taxing authority. Obligations, including interest thereon, issued by public housing agencies in connection with low-rent-housing or slum-clearance projects, and the income derived by such agencies from such projects, shall be exempt from all taxation now or hereafter imposed by the United States. Sept. 1, 1937, c. 896, § 5, 50 Stat. 890; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

Historical Note

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

Cross References

Suits limited to functions under this chapter and sections 1501–1505 of this title, see section 1404a of this title.

United States obligations and evidences of ownership issued after Mar. 27, 1942, as subject to Federal taxation, see section 742a of Title 31, Money and Finance.

Notes of Decisions

1. Local authorities, status, etc.

Housing authorities, provided for by this chapter, to attain object of slum clearance and low-rent housing by means of assistance from Federal Housing Authority, are created for "public purpose," as regards expenditure of public funds or right of condemnation. Krause v. Peoria Housing Authority, 1939, 19 N.E.2d 193, 370 Ill. 356.

The Peoria Housing Authority created under this chapter to enable local housing authorities to attain object of slum clearance by means of assistance from Federal Housing Authority is a "public charity" within Smith-Hurd Ann.St., c. 67½, § 1 et seq. and §§ 24, 25, notwithstanding that small amount of rent would be charged occupants of the property. Id.

Adoption by the city and county of San Francisco of a housing program, and authorization of housing and slum clearance contracts, was "administrative" rather than "legislative" action, and hence could be accomplished by resolution without necessity of enacting ordinance. Kleiber v. City and County of San Francisco, 1941, 117 P.2d 657, 18 Cal. 2d 718.

Ordinances of city of Covington and proposed contracts for slum clearance projects under this chapter were not invalid on ground that city was undertaking to condemn property for benefit of local housing commission upon discretion of the commission and not upon discretion of city authorities, where whole tenor and intent of ordinances and contracts were that characterization and elimination of buildings and areas should be by co-operative action and, if board of commissioners of city did not concur in selections and plans of commission, nothing could be done. Douthitt v. City of Covington, 1940, 144 S.W.2d 1025, 284 Ky. 382.

2. Taxes

Under this chapter exempting from taxation the property of the Federal Public Housing Authority, low-cost dwelling units owned by the Federal Public Housing Authority and leased to State of Ohio authorities which sublet the units to tenants were exempt from state, county and municipal taxation. City of Cleveland v. U. S., 1945, 65 S.Ct. 280, 323 U.S. 329, 89 L.Ed. 274.

Where all necessary and proper parties to Government's suits for foreclosure of purchasers' rights under contracts for purchase of property owned by United States Housing Corporation had been before the court, judgments entered therein were conclusive on rights of municipality and school district, as incidental beneficiaries, to tax the property. U. S. v. City of Philadelphia, C.C.A.Pa. 1944, 140 F.2d 406.

The rights of municipality and school district to tax property owned by United States Housing Corporation upon corporation entering into contracts for sale of the property were incidental to rights acquired by purchasers, and, as incidental beneficiaries, municipality and school district had no interest that was cognizable in Government's suits to terminate purchasers' rights under the contracts. Id.

Property acquired by Federal Public Housing Authority for housing project was exempt from taxes attempted to be levied by the state of Wisconsin and the city and county of Milwaukee, notwithstanding the United States did not have exclusive jurisdiction over the property, or that it was not acquired with the consent of state legislature. U. S. v. City of Milwaukee, C.C.A.Wis.1944, 140 F.2d 286, certiorari denied 64 S.Ct. 1047, 322 U.S. 735, 88 L.Ed. 1568.

That title to property acquired by Federal Public Housing Authority for housing project was held by governmental instrumentality rather than the government itself did not affect the property's exemption from local taxation. Id.

A housing project, operated by a metropolitan housing authority but owned by a private corporation, was not exempt from state taxation under any provision of Federal Constitution or this chapter. Youngstown Metropolitan Housing Authority v. Evatt, 1944, 55 N.E.2d 122, 143 Ohio St. 268.

Subsection (e) of this section had no application to exempt a housing authority organized pursuant thereto and pursuant to state statute from liability for state sales taxes on purchase of supplies. Housing Authority of City of Wilmington v. Johnson, 1964, 134 S.E.2d 121, 261 N.C. 76.

3. Suits by or against

Where contract for the construction of certain Federal housing cautioned contractor to ascertain whether work as shown on drawings or specifications varied from requirements of city or utility companies to extent that permission to connect with their lines or services might be refused and in such case that contractor should not proceed further with that part of work until instructed

to do so, it was incumbent upon contractor to consider such condition as it calculated all other factors of cost before entering into contract, hence contractor could not recover for delay occasioned by order to suspend plumbing work until housing authority effected a settlement of city's objections to plumbing specifications. George H. Evans & Co. v. U. S., C.A.Pa.1948, 169 F.2d 500.

Misuse of Federal funds in housing project would not cause injury to complainants as state and city taxpayers and support suit for injunction by them. Matthaei v. Housing Authority of Baltimore City, 1939, 9 A.2d 835, 177 Md. 506.

Question of transgression of limits on powers of governmental agencies under this chapter is one for judicial determination. Id.

The consent in subsection (b) of this section that Public Housing Authority may be sued extends to torts committed by the Authority while performing any governmental function delegated to it by Congress or the President pursuant to authority granted him by act of Congress. National Housing Agency v. Orton, Tex.Civ.App.1947, 202 S.W.2d 243, writ of error refused (N.R.E.).

The Federal Public Housing Authority, which maintained a dormitory for national defense workers, could be held liable in damages for negligent injury of night watchman employed by it in Nov., 1943, which incapacitated watchman in 1944. Id.

4. Jurisdiction

The Federal Public Housing Authority could make a general appearance in a cause and thereby subject itself to jurisdiction of state court, since it is a corporate entity separate from the Federal Government which Congress has authorized to do business anywhere in the United States and to sue and be sued. National Housing Agency v. Orton, Tex. Civ.App.1947, 202 S.W.2d 243, writ of error refused (N.R.E.).

5. Venue

Even if this section, authorizing action against Public Housing Administration, be regarded as mere waiver of governmental immunity, action within district within which Administration is engaging in business would be authorized on ground that Administration is to be regarded as public corporation within meaning of the venue statutes, section 1391 et seq. of Title 28. Sigona v. Slusser, D.C.Conn.1954, 124 F.Supp. 327.

In action against Public Housing Commissioner for injuries received by minor plaintiff in fall over pipe which protruded 18 inches above ground in housing project owned, operated, and managed by Public Housing Administration, venue was properly laid in Connecticut district, in which cause of action arose and in which Housing Administration was carrying on business. Id.

6. Parties

The Federal District Court, in exercise of sound discretion under Rule 39, Federal Rules of Civil Procedure, 28 U.S.C.A., should not entertain jurisdiction to dispose of issues in action against Federal Public Housing Administration and Housing and Home Finance Agency for declaratory judgment determining whether defendants can give Federal assistance to city housing authority, a state agency, in construction of low rent public housing project, from which plaintiffs, who are Negroes, will be denied admission solely because of their race and color, without violating their constitutional and statutory rights, nor grant them an injunction, in absence of city housing authority as a party to action. Heyward v. Public Housing Administration, 1954, 214 F.2d 222, 94 U.S. App.D.C. 5.

In action against Public Housing Commissioner for injuries received by minor plaintiff in fall over pipe which protruded 18 inches above ground in housing project owned, operated, and managed by Public Housing Administration, plaintiffs were technically in error in naming Commissioner as defendant, but action against Commissioner in his official capacity constituted action against Housing Administration, and, therefore, plaintiffs would be entitled to make the necessary amendment. Sigona v. Slusser, D.C.Conn.1954, 124 F.Supp. 327.

In action by former owner to recover condemned land on ground that purpose of condemnation had not been carried out, United States Housing Authority and third party to whom defendant had leased the land were not indispensable parties. Hutton v. Autoridad Sobre Hogares De La Capital, D.C.Puerto Rico 1948, 78 F.Supp. 988.

7. Dismissal

Complaint that it was the allegedly improper orders of defendant governmental agencies which caused plaintiff to incur the additional expense sought to be recovered was not dismissible on the ground of sovereign immunity on the theory that the United States, and not the agency defendants, was really the defendant. George H. Evans & Co. v. U. S., C.A.Pa.1948, 169 F.2d 500.

§ 1406. Same; financial provisions—Administrative expenditures; sales and loans; audit

(a) The Administration may make such expenditures, subject to audit under the general law, for the acquisition and maintenance of adequate administrative agencies, offices, vehicles, furnishings, equipment, supplies, books, periodicals, printing and binding, for attendance at meetings, for any necessary traveling expenses within the United States, its Territories, dependencies, or possessions, and for such other expenses as may from time to time be found necessary for the proper administration of this chapter. Such financial transactions of the Administration as the making of loans, annual contributions, and capital grants, and the acquisition, sale, exchange, lease, or other disposition of real and personal property, and vouchers approved by the Commissioner in connection with such financial transactions, shall be final and conclusive upon all officers of the Government; except that all such financial transactions of the Administration shall be audited by the General Accounting Office at such times and in such manner as the Comptroller General of the United States may by regulation prescribe.

(b) Repealed. Oct. 31, 1951, c. 654, § 1(112), 65 Stat. 705.

United States made materials

(c) The use of funds made available for the purposes of this chapter shall be subject to the provisions of section 10a of Title 41, and to make such provisions effective every contract or agreement of any kind pursuant to this chapter shall contain a provision identical to the one prescribed in section 10b of Title 41.

Presidential approval of annual contracts, etc.

(d) No annual contribution, grant, or loan, and no contract for any annual contribution, grant, or loan, under this chapter, shall be undertaken by the Administration except with the approval of the President.

References to this chapter in sections 1501–1505 of this title

(e) With respect to all projects under sections 1501–1505 of this title, references therein to the United States Housing Act of 1937, as amended, shall include all amendments to said Act made by the Housing Act of 1949 or by any other law thereafter enacted. Sept. 1, 1937, c. 896, § 6, 50 Stat. 890; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; July 15, 1949, c. 338, Title III, § 307(c), 63 Stat. 429; Oct. 31, 1951, c. 654, § 1(112), 65 Stat. 705.

Historical Note

References in Text. The Housing Act of 1937, as amended, referred to in subsec. (e), is classified to this chapter.

The "said Act", referred to in subsec. (e), refers to the Housing Act of 1937.

The Housing Act of 1949, referred to in subsec. (e), amended sections 1401, 1402, 1406, 1409–1411, 1413–1416 and 1420–1430 of this title which sections are a part of the United States Housing Act of 1937.

1951 Amendment. Subsec. (b). Act Oct. 31, 1951 repealed subsec. (b), which provided that section 5 of Title 41 should not apply to contracts for services and to purchases of supplies except when the aggregate amount involved was less than $300.

1949 Amendment. Subsec. (e). Act July 15, 1949 added subsec. (e).

Transfer of Functions. "Administration" was substituted for "Authority" and "Commissioner" for "Administrator" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

Delegation of Functions. For delegation of functions, vested in the President by subsec. (d) of this section, to the Housing and Home Finance Administrator, see section 4(c) of Ex.Ord.No.10530, May 11, 1954, 19 F.R. 2709, set out as a note under section 301 of Title 3, The President.

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550.

Cross References

Administrative—
Bids without advertising, limitation, except under certain conditions, now $500, see section 5 of Title 41, Public Contracts.
Expenses, see section 1404a of this title.
Funds, availability for expenses of uncompensated advisers serving away from home, see section 1406b of this title.

§ 1406a. Same; expenses of management and operation of transferred projects as nonadministrative; payment

On and after May 10, 1939 all necessary expenses in connection with the management and operation of projects transferred to the Authority by Executive Order Numbered 7732 of October 27, 1937, as modified by Executive Order Numbered 7839 of March 12, 1938, may be considered as nonadministrative expenses, notwithstanding the provisions of section 712a of Title 15, and be paid from the rents received from each transferred project. May 10, 1939, c. 119, § 1, 53 Stat. 690.

Historical Note

Codification. Section was not enacted as a part of the United States Housing Act of 1937, which constitutes this chapter.

Transfer of Functions. United States Housing Authority transferred to Public Housing Administration by 1947 Reorg. Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947. 12 F.R. 4981, 61 Stat. 954, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

Ex.Ord. No. 7732, Oct. 27, 1937, 2 F.R. 2324, 44 C.F.R. 201.11, eff. Nov. 1, 1937, transferred to the United States Housing Authority all right, interest, and title held by the Federal Emergency Administration of Public Works in any housing or slum-clearance projects constructed or in the process of construction on Sept. 1, 1937. See note under former section 1403 of this title.

Similar Provisions. Provisions similar to those in this section were contained in Act June 25, 1938, c. 681, Title I, 52 Stat. 1129.

§ 1406b. Same; expenses of uncompensated advisers serving away from home

On and after May 10, 1939, the funds made available for administrative expenses of the Public Housing Administration shall be available for the payment, when specifically authorized by the Commissioner, of actual transportation expenses and not to exceed $10 per diem in lieu of subsistence and other expenses to persons serving, while away from their homes, without other compensation from the United States, in an advisory capacity to the Administration. May 10, 1939, c. 119, § 1, 53 Stat. 690; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

Historical Note

Codification. Section was not enacted as a part of the United States Housing Act of 1937, which constitutes this chapter.

Transfer of Functions. "Public Housing Administration" was substituted for "United States Housing Authority", "Commissioner" was substituted for "Administrator", and "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under former section 1403 for prior transfers of functions.

Similar Provisions. Provisions similar to those in section were contained in Act June 25, 1938, c. 681, Title I, 52 Stat. 1128.

§ 1406c. Same; expense of construction advisers on non-Federal projects

Historical Note

Codification. Section, which provided for payment of expenses of construction advisers on non-Federal projects, was from the Independent Offices Appropriation Act, 1943, Act June 27, 1942, c. 450, § 1, 56 Stat. 410, and expired by its own terms on June 30, 1944. Similar provisions were contained in Acts Apr. 5, 1941, c. 40, § 1, 55 Stat. 111; Apr. 18, 1940, c. 107, § 1, 54 Stat. 130.

§ 1407. Same; information; annual report—Publication of information

(a) The Administration may publish and disseminate information pertinent to the various aspects of housing.

Contents of annual report to Congress

(b) The annual report of the Housing and Home Finance Administrator to the President for submission to the Congress on the operations of the Housing and Home Finance Agency shall include a report on the operations and expenses of the Administration, including loans, contributions, and grants made or contracted for, low-rent housing and slum clearance projects undertaken, and the assets and liabilities of the Administration. Such report shall include operating statements of all projects under the jurisdiction of or receiving the assistance of the Administration, including summaries of the incomes of occupants, sizes of families, rentals, and other re-

lated information. Sept. 1, 1937, c. 896, § 7, 50 Stat. 891; 1947 Reorg. Plan No. 3, §§ 1, 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Aug. 2, 1954, c. 649, Title VIII, § 802(d), 68 Stat. 643.

Historical Note

1954 Amendment. Subsec. (b). Act Aug. 2, 1954 substituted in first sentence additional provisions with respect to contents of the annual report for provisions requiring that the report be made, the latter provisions now being covered by section 1701o of Title 12, Banks and Banking.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

§ 1408. Same; rules and regulations

The Administration may from time to time make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this chapter. Sept. 1, 1937, c. 896, § 8, 50 Stat. 891; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

Historical Note

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

Cross References

Rules and regulations by Public Housing Commissioner, see section 1404a of this title.

Notes of Decisions

1. Contracts

Public Housing Administration regulations were intended to prohibit contractor who had been debarred from contracting with Department of Defense from contracting with city housing authority for construction of public housing project. Arthur Venneri Co. v. Housing Authority of City of Paterson, 1959, 149 A.2d 228, 29 N.J. 392.

In the Public Housing Administration regulation providing that the fact that name of contractor appears in the Administration's list of firms and individuals debarred for other causes in respect to awards of certain types of federal contracts is prima facie evidence that contractor is not a responsible bidder for type of contract for which debarred, the phrase "other causes" means debarment other than by the Secretary of Labor and including debarment by some other executive agency. Id.

§ 1409. Loans for low-rent-housing and slum-clearance projects

The Administration may make loans to public-housing agencies to assist the development, acquisition, or administration of low-rent-housing or slum-clearance projects by such agencies. Where capital grants are made pursuant to section 1411 of this title the total

amount of such loans outstanding on any one project and in which the Administration participates shall not exceed the development or acquisition cost of such project less all such capital grants, but in no event shall said loans exceed 90 per centum of such cost. In the case of annual contributions in assistance of low rentals as provided in section 1410 of this title the total of such loans outstanding on any one project and in which the Administration participates shall not exceed 90 per centum of the development or acquisition cost of such project. Such loans shall bear interest at such rate not less than the applicable going Federal rate, plus one-half of one per centum, shall be secured in such manner, and shall be repaid within such period not exceeding sixty years, as may be deemed advisable by the Administration: *Provided*, That in the case of projects initiated after March 1, 1949, with respect to which annual contributions are contracted for pursuant to this chapter, loans shall not be made for a period exceeding forty years from the date of the bonds evidencing the loan: *And provided further*, That, in the case of such projects or any other projects with respect to which the contracts (including contracts which amend or supersede contracts previously made) provide for loans for a period not exceeding forty years from the date of the bonds evidencing the loan and for annual contributions for a period not exceeding forty years from the date the first annual contribution for the project is paid, such loans shall bear interest at a rate not less than the applicable going Federal rate. Sept. 1, 1937, c. 896, § 9, 50 Stat. 891; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; July 15, 1949, c. 338, Title III, § 304(c), (d), 63 Stat. 425.

Historical Note

1949 Amendment. Act July 15, 1949, § 304(c), substituted "applicable going Federal rate" for "going Federal rate at the time the loan is made" in the fourth sentence.

Act July 15, 1949, § 304(d), added proviso.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550.

Notes of Decisions

Library references

Health ⇨32.
C.J.S. Health § 22 et seq.

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1. Generally

Slum clearance projects and low-rent housing projects are distinct one from another and may be entered upon either separately or in combination. Benjamin v. Foidl, 1954, 109 A.2d 300, 379 Pa. 540.

Neither the Pennsylvania Housing Authorities Law, 35 P.S. §§ 1541 et seq., 1542, 1543, 1556, nor this chapter presupposes necessary elimination of slums prior to building of public low-rent housing or requires the building of such housing to be on same location as that where slum area exists. Id.

A writ of mandamus was allowed ordering Cincinnati city manager to sign a contract with the Cincinnati Housing

Authority to aid and facilitate the execution of its program as directed by ordinance where evidence showed a carefully conceived and balanced plan to abolish selected slum areas in Cincinnati and to provide low rent dwelling units within municipal limits for families of low incomes in general conformity with purpose and design of this chapter. State ex rel. Ellis v. Sherrill, 1940, 25 N.E.2d 844, 136 Ohio St. 328.

This chapter was enacted to provide for low-cost housing incidental to slum clearance, but there is no requirement that the new structures be confined to slum areas. Riggin v. Dockweiler, 1940, 104 P.2d 367, 15 Cal.2d 651.

The description of buildings predominating in an area which is characterized as a "slum area" by this section and the ordinances and contracts between city and municipal housing commission relating to slum clearance projects, was substantially that which had always been the description of a "nuisance" within the power of a municipality to abate. Douthitt v. City of Covington, 1940, 144 S.W.2d 1025, 284 Ky. 382.

§ 1410. Annual contributions in assistance of low rentals—Authorization

(a) The Administration may make annual contributions to public housing agencies to assist in achieving and maintaining the low-rent character of their housing projects. The annual contributions for any such project shall be fixed in uniform amounts, and shall be paid in such amounts over a fixed period of years. The Administration shall embody the provisions for such annual contributions in a contract guaranteeing their payment over such fixed period: *Provided,* That the Administration may, in addition to the payments guaranteed under the contract, pay not to exceed $120 per annum per dwelling unit occupied by an elderly family, or a displaced family if such family was displaced by an urban renewal or low-rent housing project on the last day of the project fiscal year where such amount, in the determination of the Administration, was necessary to enable the public housing agency to lease the dwelling unit to the elderly or displaced family at a rental it could afford and to operate the project on a solvent basis, and, in the case of displaced families, if and to the extent that the average or estimated average rental for units so occupied by such families was less than the rental which the Administration determines, on the basis of the average or estimated average project rentals, which would have been established in leasing the units to families which were neither elderly nor similarly displaced. The Administration shall not make any contract for loans (other than preliminary loans) or for annual contributions or for capital grants pursuant to this chapter with respect to any low-rent housing project initiated after March 1, 1949, unless the governing body of the locality involved has entered into an agreement with the public housing agency providing that, subsequent to the initiation of the low-rent housing project and within five years after the completion thereof, there has been or will be elimination, by demolition, condemnation, effective closing, or compulsory repair or improvement, of unsafe or insanitary dwelling units situated in the locality or metropolitan area substantially equal in number to the number of newly constructed dwelling units provided by such project: *Provided, however,*

That where more than one family is living in an unsafe or insanitary dwelling unit the elimination of such unit shall count as the elimination of units equal to the number of families accommodated therein: *Provided further*, That such elimination may, in the discretion of the Administration be deferred in any locality or metropolitan area where there is an acute shortage of decent, safe, or sanitary housing available to families of low income: *And provided further*, That this requirement shall not apply in the case of any low-rent housing project located in a rural non-farm area, or to any low-rent housing project developed on the site of a slum cleared subsequent to July 15, 1949, and that the dwelling units which had been eliminated by the clearance of the site of such project shall not be counted as elimination for any other low-rent project.

Limitation on particular contribution and periods

(b) Annual contributions shall be strictly limited to the amounts and periods necessary, in the determination of the Administration, to assure the low-rent character of the housing projects involved. Toward this end the Administration may prescribe regulations fixing the maximum contributions available under different circumstances, giving consideration to cost, location, size, rent-paying ability of prospective tenants, or other factors bearing upon the amounts and periods of assistance needed to achieve and maintain low rentals. Such regulations may provide for rates of contribution based upon development, acquisition or administration cost, number of dwelling units, number of persons housed, or other appropriate factors: *Provided*, That the fixed contribution payable annually under any contract shall in no case exceed a sum equal to the annual yield, at the applicable going Federal rate plus 1 per centum, upon the development or acquisition cost of the low-rent housing or slum-clearance project involved.

Reduction in annual contributions; duration of contracts

(c) Every contract for annual contributions shall provide that whenever in any year the receipts of a public housing agency in connection with a low-rent housing project exceed its expenditures (including debt service, administration, maintenance, establishment of reserves, and other costs and charges), an amount equal to such excess shall be applied, or set aside for application, to purposes which, in the determination of the Administration, will effect a reduction in the amount of subsequent annual contributions. In no case shall any contract for annual contributions be made for a period exceeding sixty years: *Provided*, That, in the case of projects initiated after March 1, 1949, contracts for annual contributions shall not be made for a period exceeding forty years from the date the first annual contribution for the project is paid: *And provided further*, That, in the case of such projects or any other projects with respect to which the contracts for annual contributions (including contracts which amend or supersede contracts previously made) pro-

vide for annual contributions for a period not exceeding forty years from the date the first annual contribution for the project is paid, the fixed contribution may exceed the amount provided in the first proviso of subsection (b) of this section by 1 per centum of development or acquisition cost.

Availability of funds

(d) All payments of annual contributions pursuant to this section shall be made out of any funds available to the Administration when such payments are due, except that its capital and its funds obtained through the issuance of obligations pursuant to section 1420 of this title (including repayments or other realizations of the principal of loans made out of such capital and funds) shall not be available for the payment of such annual contributions.

Limitation on aggregate contractual contributions

(e) The Administration is authorized to enter into contracts for annual contributions aggregating not more than $366,250,000 per annum, but any such contracts for additional units for any one State shall not, after June 30, 1961, be entered into for more than 15 per centum of the aggregate amount not already guaranteed under contracts for annual contributions on such date: *Provided*, That no such new contract for additional units shall be entered into after June 30, 1961 except with respect to low-rent housing for a locality respecting which the Administrator has made the determination and certification relating to a workable program as prescribed in section 1451(c) of this title, and the Administration shall enter into only such new contracts for preliminary loans as are consistent with the number of dwelling units for which contracts for annual contributions may be entered into. Without further authorization from Congress, no new contracts for annual contributions beyond those herein authorized shall be entered into by the Administration. The faith of the United States is solemnly pledged to the payment of all annual contributions contracted for pursuant to this section, and there is hereby authorized to be appropriated in each fiscal year, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such payments.

Payments under contractual contributions to be pledged for loans

(f) Payments under annual contributions contracts shall be pledged, if the Administration so requires, as security for any loans obtained by a public housing agency to assist the development or acquisition of the housing project to which the annual contributions relate.

Maximum income limits; admission policies

(g) Every contract for annual contributions for any low-rent housing project shall provide that—

(1) the maximum income limits fixed by the public housing agency shall be subject to the prior approval of the Administration and the Administration may require the agency to review and revise such limits if the Administration determines that changed conditions in the locality make such revisions necessary in achieving the purposes of the chapter;

(2) the public housing agency shall adopt and promulgate regulations establishing admission policies which shall give full consideration to its responsibility for the rehousing of displaced families, to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran or to a disabled serviceman or veteran, and to the applicant's age or disability, housing conditions, urgency of housing need, and source of income: *Provided*, That in establishing such admission policies the public housing agency shall accord to families of low income such priority over single persons as it determines to be necessary to avoid undue hardship; and

(3) the public housing agency shall determine, and so certify to the Administration, that each family in the project was admitted in accordance with duly adopted regulations and approved income limits; and the public housing agency shall make periodic reexaminations of the incomes of families living in the project and shall require any family whose income has increased beyond the approved maximum income limits for continued occupancy to move from the project unless the public housing agency determines that, due to special circumstances, the family is unable to find decent, safe and sanitary housing within its financial reach although making every reasonable effort to do so, in which event such family may be permitted to remain for the duration of such a situation if it pays an increased rent consistent with such family's increased income.

Exemptions of projects from taxes; contributions by States, city, county or other political subdivisions

(h) Every contract made pursuant to this chapter for annual contributions for any low-rent housing project initiated after March 1, 1949, shall provide that no annual contributions by the Administration shall be made available for such project unless such project (exclusive of any portion thereof which is not assisted by annual contributions under this chapter) is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivisions, but such contract shall require the public housing agency to make payments in lieu of taxes equal to 10 per centum of the annual shelter rents charged in such project or such lesser amount as (i) is prescribed by State law, or (ii) is agreed to by the local governing body in its agreement for local cooperation with the public housing agency required under section 1415(7) (b) (i) of this title, or (iii) is due to failure of a local public body or bodies other

than the public housing agency to perform any obligation under such agreement: *Provided*, That, with respect to any such project which is not exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivisions, such contract shall provide, in lieu of the requirement for tax exemption and payments in lieu of taxes, that no annual contributions by the Administration shall be made available for such project unless and until the State, city, county, or other political subdivisions in which such project is situated shall contribute, in the form of cash or tax remission, the amount by which the taxes paid with respect to the project exceed 10 per centum of the annual shelter rents charged in such project: *Provided further*, That, prior to execution of the contract for annual contributions the public housing agency shall, in the case of a tax-exempt project, notify the governing body of the locality of its estimate of the annual amount of such payments in lieu of taxes and of the amount of taxes which would be levied if the property were privately owned, or, in the case where the project is taxed, its estimate of the annual amount of the local cash contribution, and shall thereafter include the actual amounts of such payments or contributions in its annual report. Contracts for annual contributions entered into prior to September 2, 1964, may be amended in accordance with the first sentence of this subsection.

Payment for services and facilities to municipalities or other local governmental agencies

(i) Notwithstanding any other provision of law or any contract or other arrangement made pursuant thereto, any public housing agency which utilizes public services and facilities of a municipality or other local governmental agency making charges therefor separate from real and personal property taxes shall be authorized by the Administration (without any amendment to the contract for annual contributions or deductions from payments in lieu of taxes otherwise payable) to pay to such municipality or other local governmental agency the amount that would be charged private persons or dwellings similarly situated for such facilities and services.

(j) Repealed. Pub.L. 87–70, Title II, § 206(c), June 30, 1961, 75 Stat. 165.

Audit and settlement of expenditures for payment of contributions

(k) All expenditures of appropriations for the payment of annual contributions shall be subject to audit and final settlement by the Comptroller General of the United States under the provisions of the Budget and Accounting Act of 1921, as amended.

Sale of projects to private ownership; procedure; proceeds

(*l*) In any community where it has been determined by resolution or ordinance, or by referendum, that a project shall be liquidated by sale thereof to private ownership, such community may negotiate with the Federal Government with respect to the sale of the project,

and the Administration shall agree that sale of the project may be made after public advertisement to the highest bidder upon (1) payment and retirement of all outstanding obligations (together with any interest payable thereon and any premiums prescribed for the redemption of any bonds, notes, or other obligations prior to maturity) in connection with the project, and (2) payment of any proceeds received from the sale of the project in excess of the amounts required to comply with the requirements of the preceding clause numbered (1) to the Administration and to local public bodies in proportion to the aggregate contribution which the Administration and such local public bodies have made to the project.

(m) Repealed. Pub.L. 87–70, Title II, § 205(b), June 30, 1961, 75 Stat. 164.

Sept. 1, 1937, c. 896, § 10, 50 Stat. 891; June 21, 1938, c. 554, Title VI, § 601, 52 Stat. 820; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 491, 61 Stat. 954; July 15, 1949, c. 338, Title III, §§ 302 (a), 304(a), (c), (e), (f), 305, 307(d), 63 Stat. 423–427, 430; Aug. 2, 1954, c. 649, Title IV, §§ 401(1), (2), 402, 403, 405, 406, 68 Stat. 630; June 30, 1955, c. 251, § 3, 69 Stat. 225; Aug. 11, 1955, c. 783, Title I, § 108(b), 69 Stat. 638; Aug. 7, 1956, c. 1029, Title IV, §§ 401(a), 404 (b), 70 Stat. 1103, 1104; Sept. 23, 1959, Pub.L. 86–372, Title V, §§ 505(a), 507, 73 Stat. 680, 681; June 30, 1961, Pub.L. 87–70, Title II, §§ 203, 204(a), (b), 205, 206(b), (c), 75 Stat. 163, 164, 165; Sept. 2, 1964, Pub.L. 88–560, Title IV, §§ 401(b), 402–404, 78 Stat. 794, 795.

Historical Note

References in Text. The Budget and Accounting Act of 1921, as amended, referred to in subsec. (k), is classified to chapter 1 of Title 31, Money and Finance, and to sections 71, 471, 581, and 581a of that title.

1964 Amendment. Subsec. (a). Pub.L. 88–560, § 402, included displaced families within the proviso permitting the Authority to pay up to $120 per annum per dwelling unit in addition to the payments guaranteed by contract.

Subsec. (e). Pub.L. 88–560, § 403, substituted "$366,250,000" for "$336,000,000."

Subsec. (g) (2). Pub.L. 88–560, § 401 (b), substituted "displaced families" for "those displaced by urban renewal or other governmental action" and provided that the public housing agency shall accord low income families priority over single persons in admission policies as necessary to avoid undue hardship.

Subsec. (h). Pub.L. 88–560, § 404, substituted "September 2, 1964" for "August 2, 1954", and deleted provisions which prohibited payments in lieu of taxes if such payments reduced the value of the tax exemption to an amount less than 20 per centum of the Federal contribution.

1961 Amendment. Subsec. (a). Pub.L. 87–70, § 203, empowered the Authority, in addition to the payments guaranteed under the contract, to pay not more than $120 per annum per dwelling unit occupied by an elderly family on the last day of the project fiscal year where such amount was necessary to enable the public housing agency to lease the dwelling unit to the elderly family at a rental it could afford and to operate the project on a solvent basis.

Subsec. (e). Pub.L. 87–70, § 204(a), authorized the Authority to enter into contracts for annual contributions aggregating not more than $336,000,000 per annum, limited contracts for additional units for any one State, after June 30, 1961, to not more than 15 per centum of the aggregate amount not already guaranteed under contracts for annual contributions on such date, prohibited new contracts for additional units after June 30, 1961 except with respect to low-rent housing for a locality respecting which the determination and certification relating to a workable program has been

made, permitted the Authority to enter into only such new contracts for preliminary loans as are consistent with the number of dwelling units for which contracts for annual contributions may be entered into, and eliminated provisions which limited the dwelling units to not more than $10,000.

Subsec. (g). Pub.L. 87-70, § 205(a), substituted provisions requiring all contracts to provide that the maximum income limits fixed by the public housing agency shall be subject to the prior approval of the Authority, that the agency shall adopt and promulgate regulations establishing admission policies giving full consideration to displaced persons, servicemen and veterans, relatives of servicemen and veterans, and to the applicant's age or disability, housing conditions, urgency of the housing needed, and source of income, and that the agency shall determine, and so certify, that each family was admitted in accordance with duly adopted regulations and approved income limits, and that the agency shall make periodic reexaminations of the income limitations and will require any family whose income has increased beyond the maximum income limits to move unless there is a determination that, due to special circumstances, the family is unable to find decent, safe and sanitary housing within its financial reach although making every reasonable effort to do so, in which event the family may be permitted to stay for the duration of the situation at an increased rental, for provisions which required all contracts to contain provisions giving preferences to displaced families, disabled veterans, veterans and servicemen, and to their families.

Subsec. (h). Pub.L. 87-70, § 206(b), inserted the parenthetical phrase "(exclusive of any portion thereof which is not assisted by annual contributions under this chapter)."

Subsec. (i). Pub.L. 87-70, § 204(b), redesignated par. (10) of section 15 of Act Sept. 1, 1937, as added by section 507 of Pub.L. 86-372, as subsec. (i) of this section, and repealed former subsec. (i) which related to new contracts for loans and annual contributions for additional dwelling units.

Subsec. (j). Pub.L. 87-70, § 206(c), repealed former subsec. (j), which related to self-liquidation of projects.

Subsec. (m). Pub.L. 87-70, § 205(b), repealed former subsec. (m), which permitted the Authority to assist the construction of new housing or the remodeling of existing housing in order to provide accommodations designed specifically for elderly families and empowered the public housing agencies to extend a prior preference to such families.

1959 Amendment. Subsec. (i). Pub.L. 86-372 substituted provisions authorizing the Authority to enter into new contracts for loans and annual contributions for (1) not more than such number of dwelling units as does not exceed the number of units which were covered by annual contribution contracts on Sept. 23, 1959 and are not built, the contracts therefor being cancelled, and (2) additional dwelling units, which, together with the dwelling units covered by new contracts entered into under cl. (1) do not exceed 37,000 units, for provisions which permitted the Authority to enter into new contracts for loans and annual contributions after July 31, 1956, for not more than 35,000 additional dwelling units, which amount increased by 35,000 additional dwelling units on July 1, 1957, and eliminated provisions which required the Authority to enter into new contracts for annual contributions with respect to each 35,000 additional units to terminate two years after the first date on which such authority may be exercised.

1956 Amendment. Subsec. (i). Act Aug. 7, 1956, § 401(a), authorized new contracts for 35,000 dwelling units after July 31, 1956, in lieu of former provisions authorizing 45,000 from Aug. 11, 1955 through July 31, 1956, amended proviso to terminate contract authority after two years, inserted further proviso that balance of authorization not used by 1956 shall be available in any succeeding year, and inserted further proviso that no new contracts for contributions for units shall be entered into except for low-rent housing for a locality respecting which the Housing and Home Finance Administrator has made the determination and certification relating to a workable program as prescribed in section 1451(c) of this title.

Subsec. (m). Act Aug. 7, 1956, § 404(b), added subsec. (m).

1955 Amendments. Subsec. (i). Acts June 30, 1955, and Aug. 11, 1955, amended subsec. (i). Act June 30, 1955 substituted "period from June 30, 1954 to August 1, 1955" for "fiscal year 1955". Act Aug. 11, 1955 authorized new contracts for loans and annual contributions for not more than 45,000 additional dwelling units, and eliminated the requirement that a slum clearance and urban redevelopment or urban renewal project is being carried out in the community, and the provisions relating to certification.

1954 Amendment. Subsec. (g). Act Aug. 2, 1954, § 401(2), extended the preference provision to families which are to be displaced through other public actions, which provision, prior to such amendment, extended a first preference only to families which are to be displaced by a low-rent project or by a public slum clearance or redevelopment project.

Subsec. (h). Act Aug. 2, 1954, § 402, amended provisions generally to make mandatory on a local housing authority any payments in lieu of taxes stipulated in its cooperation agreement with the local governing body, and to revise the provisions with respect to such agreements.

Subsecs. (i)-(*l*). Act Aug. 2, 1954, §§ 401(1), 403, 405, 406, added subsecs. (i)-(*l*) respectively.

1949 Amendment. Subsec. (a). Act July 15, 1949, §§ 305(b), 307(d), deleted former third sentence prohibiting annual contributions for any project unless the political subdivision contributed at least 20 per centum of such contributions, deleted a proviso in former fourth sentence, now the third sentence, and added last sentence which embraces provisions similar to those contained in said deleted proviso.

Subsec. (b). Act July 15, 1949, § 304(a), (c), repealed a former last proviso which required that all such annual contributions be used first toward loan interest or principal, and substituted "applicable going Federal rate" for "going federal rate of interest at the time such contract is made" in the present proviso.

Subsec. (c). Act July 15, 1949, § 304(e), (f), added proviso to last sentence, and amended first sentence to provide for reduction in amount of annual contributions whenever receipts justify it.

Subsec. (e). Act July 15, 1949, § 305(a), inserted the second and third sentences.

Subsec. (f). Act July 15, 1949, § 304(a), omitted a proviso requiring that annual contributions be used first to apply toward payment of loan interest or principal as same matured, and omitted former second sentence defining "any loan due to the Administration".

Subsec. (g). Act July 15, 1949, § 302(a), added subsec. (g).

Subsec. (h). Act July 15, 1949, § 305(b), added subsec. (h).

1938 Amendment. Subsec. (e). Act June 21, 1938 substituted an authorization for aggregate annual contribution contracts of $28,000,000 per annum for the prior authorization of $5,000,000 per annum on and after Sept. 1, 1937, $7,500,000 on or after July 1, 1938, and $7,500,000 on or after July 1, 1939.

Subsec. (f). Act June 21, 1938, added subsec. (f).

Effective Date of 1956 Amendment. Section 401(a) of Act Aug. 7, 1956, provided in part that amendment to subsec. (i) by section shall be effective Aug. 1, 1956.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

The word "Authority" was used in the amendment of this section by Act July 15, 1949, Pub.L. 86-372, Pub.L. 87-70, without reference to 1947 Reorg.Plan No. 3, which substituted "Administration" for "Authority".

Delegation of Functions. For delegation of functions, vested in the President by subsection (e) of this section, to the Housing and Home Finance Administrator, see section 4(c) of Ex.Ord.No.10530, May 11, 1954, 19 F.R. 2709, set out as a note under section 301 of Title 3, The President.

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550. See, also, Act June 30, 1955, 1955 U.S. Code Cong. and Adm.News, p. 2296; Act Aug. 7, 1956, 1956 U.S.Code Cong. and Adm.News, p. 4509; Pub.L. 86-372, 1959 U.S.Code Cong. and Adm.News, p. 2844; Pub.L. 87-70, 1961 U.S.Code Cong. and Adm.News, p. 1923.

Notes of Decisions

1. Federal authority

The provision of this section relating to limitation on dwelling-unit costs authorized Public Housing Administration to impose PHA budgetary supervision over each project aided by it as a condition of grant of annual contributions.

Commissioner of Labor and Industries v. Boston Housing Authority, Mass.1963, 188 N.E.2d 150.

In determining whether orders of Commissioner of Labor and Industries requiring Boston Housing Authority substantially to increase its wage expense were void as to federally aided projects, if Public Housing Administration did not approve increased wage rates, orders would direct authority to make expenditures in excess of those in approved operating budget, and such excess expenditures would be a "substantial breach" of contributions contract, entitling PHA to demand possession of projects and to operate them. Id.

2. State authority

Housing authority receiving federal assistance, and covenanting that housing project would not be operated for a profit, was not precluded from increasing rents in project on ground that increased rents would create a reserve larger than required to meet interest and principal payments on authority's indebtedness incurred in construction of project, if 60-year bonds were issued as permitted by contract between authority and Federal Government, since authority was not required to issue bonds for 60 years or to fix rents on basis of such a bond issue. Jarrett v. Norfolk Redevelopment and Housing Authority, C.A. Va.1948, 169 F.2d 409, certiorari denied 69 S.Ct. 238, 335 U.S. 886, 93 L.Ed. 425.

The fixing of rentals, in a housing project constructed pursuant to a contract with federal public housing authority, is for the housing authority's and not court's discretion. Id.

Federal Public Housing Administration was not necessary party to action to compel city public housing administration to process application for admission to units in low income dwelling developments without regard to race or color, where document regulating relations between federal and city housing administration made selection of tenants and assignments of dwelling unit matters primarily for local determination. Banks v. Housing Authority of City and County of San Francisco, 1953, 260 P.2d 668, 120 C.A.2d 1, certiorari denied 74 S.Ct. 784, 347 U.S. 974, 98 L.Ed. 1113.

City and County of San Francisco were not necessary parties to action to compel housing authority of City and County of San Francisco to disregard color and creed in selection of tenants for units in low income housing projects within the authority's control where cooperation agreement between city and county and housing authority disallowed consideration of race or creed in determining eligibility of applicants in units concerned in suit. Id.

An action to require public housing authority to certify petitioners for admission to units in permanent public low rent housing development under housing authority's ownership and control without regard to race or color, and to require housing authority to institute policy of determining eligibility of all applicants for such housing without regard to race or color, could be maintained as a representative or class suit, for benefit of petitioners, and for benefit of other persons similarly interested, particularly members of petitioners' race, eligible or potentially eligible for admission to such housing projects. Id.

3. Tax exemption

Where city housing authority and city entered into a cooperation agreement respecting construction of low-rent housing projects by which city agreed that throughout the useful life of projects it would not levy, impose or charge any taxes, special assessments, service fees, charges or tolls against the project or the authority and that it would furnish without cost or charge to authority and tenants of each project the usual municipal services and facilities which were or may be furnished free to other dwellings and inhabitants in the city, housing authority was exempt from sewer service charge imposed by subsequent ordinance on all premises served by water. Housing Authority of City of Seattle v. City of Seattle, 1960, 351 P.2d 117, 56 Wash. 2d 10.

4. Contributions by political subdivisions

Where Housing Authority and City entered into an agreement that City would furnish to Authority services being furnished without charge to other inhabitants who did not at that time pay any sewage charges, Housing Authority and not City was liable for service charges made by subsequently created Sewerage Authority for sewage treatment where City inhabitants also paid service charges. Jersey City Sewerage Authority v. Housing Authority of City of Jersey City, 1963, 190 A.2d 870, 40 N.J. 145.

County's complaint against city for county's share of money which city received from housing authority in lieu of taxes each year was for money had and received, and separate cause accrued each

year. Jefferson County v. City of Watertown, 1963, 241 N.Y.S.2d 339, 39 Misc.2d 534.

5. Waiver of contributions

Housing Authority's payments to taxing bodies from federal funds in lieu of taxes were not "taxes" and county's periodic acceptance from city of tax moneys not including such payments was not waiver of county's right to such payments in lieu of taxes, nor was county estopped to assert the right. Jefferson County v. City of Watertown, 1963, 241 N.Y.S.2d 339, 39 Misc.2d 534.

6. Declaratory judgment

Where Negro citizen owners contended that defendants breached contract with the Public Housing Administration by failing to provide citizens with housing accommodations in accordance with contract and owners did not allege they were eligible to occupy low-rent housing project and tenants citizens likewise asserted a breach of contract and they were eligible and charged racial segregation, common relief on behalf of two distinct classes of plaintiffs was not sought and prayer for declaratory judgment must be denied. Watts v. Housing Authority of Birmingham Dist., D.C.Ala. 1956, 150 F.Supp. 552.

§ 1411. Capital grants in assistance of low rentals—Authorization

(a) As an alternative method of assistance to that provided in section 1410 of this title, when any public housing agency so requests and demonstrates to the satisfaction of the Administration that such alternative method is better suited to the purpose of achieving and maintaining low rentals and to the other purposes of this chapter, capital grants may be made to such agency for such purposes. The capital grants thus made for any low-rent-housing or slum-clearance project shall be paid in connection with its development or acquisition, and shall be strictly limited to the amounts necessary, in the determination of the Administration, to assure its low-rent character.

Limitation on amount of particular grant

(b) Pursuant to subsection (a) of this section, the Administration may make a capital grant for any low-rent-housing or slum-clearance project, which shall in no case exceed 25 per centum of its development or acquisition cost.

Availability of funds

(c) All payments of capital grants by the Administration pursuant to subsection (b) of this section shall be made out of any funds available to the Administration, except that its capital and its funds obtained through the issuance of obligations pursuant to section 1420 of this title (including repayments or other realizations of the principal of loans made out of such capital and funds) shall not be available for the payment of such capital grants.

Limitation on aggregate grants

(d) The Administration is authorized, on or after September 1, 1937 to make capital grants (pursuant to subsection (b) of this section) aggregating not more than $10,000,000, on or after July 1, 1938, to make additional capital grants aggregating not more than $10,000,-

000, and on or after July 1, 1939, to make additional capital grants aggregating not more than $10,000,000. Without further authorization from Congress, no capital grants beyond those herein authorized shall be made by the Administration.

Additional grants for labor costs

(e) To supplement any capital grant made by the Administration in connection with the development of any low-rent-housing or slum-clearance project, the President may allocate to the Administration, from any funds available for the relief of unemployment, an additional capital grant to be expended for payment of labor used in such development: *Provided*, That such additional capital grant shall not exceed 15 per centum of the development cost of the low-rent-housing or slum-clearance project involved.

Contribution by State as condition

(f) No capital grant pursuant to this section shall be made for any low-rent-housing or slum-clearance project unless the public housing agency receiving such capital grant shall also receive, from the State, political subdivision thereof, or otherwise, a contribution for such project (in the form of cash, land, or the value, capitalized at the going Federal rate of interest, of community facilities or services for which a charge is usually made, or tax remissions or tax exemptions) in an amount not less than 20 per centum of its development or acquisition cost. Sept. 1, 1937, c. 896, § 11, 50 Stat. 893; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; July 15, 1949, c. 338, Title III, § 307(d), 63 Stat. 430.

Historical Note

1949 Amendment. Subsec. (a). Act July 15, 1949 omitted a proviso prohibiting, with certain exceptions, capital grants for projects involving new dwellings unless such projects included the elimination or repair or improvement of unsafe or insanitary dwellings substantially equal in number to the number of new units.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, and set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

§ 1411a. Prohibition of projects in localities where rejected by governing body or public vote; repayment to Federal Government; financial assistance contracts; losses; payment; examination of expenditures

Historical Note

Codification. Section, Act July 31, 1953, c. 302, Title I, § 101, 67 Stat. 306, was from the Independent Offices Appropriation Act, 1954, and was not repeated in subsequent appropriation acts. Similar provisions were contained in Acts July 5, 1952, c. 578, Title I, § 101, 66 Stat. 403; Aug. 31, 1951, c. 376, Title I, § 101, 65 Stat. 277.

§ 1411b. Repealed. Aug. 7, 1956, c. 1029, Title IV, § 401 (b), 70 Stat. 1103

Historical Note

Section, Acts July 5, 1952, c. 578, Title I, § 101, 66 Stat. 403; July 31, 1953, c. 302, Title I, § 101, 67 Stat. 307, limited number of housing units to be constructed during fiscal year.

§ 1411c. Subversives barred from occupancy of housing units; enforcement; prohibition as affecting Public Housing Administration

Historical Note

Codification. Section, Act July 31, 1953, c. 302, Title I, § 101, 67 Stat. 307, was from Independent Offices Appropriation Act, 1954, and was not repeated in subsequent appropriation acts. Similar provisions were contained in Acts July 5, 1952, c. 578, Title I, § 101, 66 Stat. 403; Aug. 31, 1951, c. 376, Title I, § 101, 65 Stat. 277.

Notes of Decisions

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1. Constitutionality

Attempted termination of tenancy by United States as landlord for sole reason that tenants refused to sign certification that they were not members of many of certain listed organizations which had been designated by Attorney General either as subversive or as otherwise within Executive Order No. 9835 section 631 note of Title 5 was, without regard to issue of constitutionality of Gwinn Amendment, providing that certain units should not be occupied by any member of organization designated as subversive, arbitrary and violative of due process requirements. Rudder v. U. S., 1955, 226 F. 2d 51, 96 U.S.App.D.C. 329.

City housing authority threatened eviction of tenant from federally aided low-rent housing project for refusal to sign certificate, prepared by local housing authority in requirement of former section 1411c of this title, that neither tenant nor any member of his family occupying apartment was a member of any organization listed by United States Attorney General in connection with government loyalty program, was an arbitrary and capricious exclusion which was violative of constitutional precept. Kutcher v. Housing Authority of City of Newark, 1955, 119 A.2d 1, 20 N.J. 181.

In action by United States to recover possession of an apartment in a low-rent housing project constructed under this chapter where trial court improperly refused to permit tenants to show unconstitutionality of former section 1411c of this title providing that no housing unit constructed under this chapter shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General, a reversal was not required in view of fact that as a matter of judicial policy trial court would have been required to rule in favor of constitutionality. Rudder v. U. S., D.C.Mun.App.1954, 105 A.2d 741, reversed on other grounds 226 F.2d 51, 96 U.S.App.D.C. 329.

Tenant of federally aided housing project had right to litigate constitutionality of administrative regulation and of Gwinn Amendment which required certification of nonmembership in subversive organizations as condition of privilege to remain as tenants, notwithstanding such housing was privilege and not right and that tenants could have been removed without grounds other than expiration of tenancy, and tenants' complaint praying for judgment of unconstitutionality accordingly stated justiciable controversy. Lawson v. Housing Authority of City of Milwaukee, 1955, 70 N.W.2d 605, 270 Wis. 269, certiorari denied 76 S.Ct. 135, 350 U.S. 882, 100 L.Ed. 778.

Former section 1411c of this title providing that no housing unit constructed under this chapter shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General, was a reasonable exercise of the congressional power, and administrative requirement that tenants sign a certificate of nonmembership was a reasonable means of effectuating the purposes of this section. Id.

Writ of error to review judgment in which it was found that former section 1411c of this title barring subversives from occupancy of low rent housing and resolution of municipal housing authority relating to enforcement of former section 1411c of this title were constitutional and that actions of authority pursuant to former section 1411c of this title and resolution were valid would be dismissed on ground of mootness where such section and resolution were no longer in effect. Wright v. Housing Authority of City and County of Denver, 1957, 318 P.2d 1103, 136 Colo. 448.

2. Generally

The "Gwinn Amendment," [this section] which provided that "no housing unit constructed under the United States Housing Act of 1937, as amended, shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General: * * *," was first enacted as a proviso to the appropriation for the payment of annual contributions to public housing agencies in the Independent Offices Appropriation Act, 1953, and was reenacted in identical terms in the Independent Offices Appropriation Act, 1954 but was omitted from the Independent Offices Appropriation Act, 1955, 1956, 41 Op.Atty.Gen., April 26.

The "Gwinn Amendment" [this section] is temporary legislation which has expired: because (1) the amendment was phrased in the form of a proviso; (2) although the language of other provisos in the legislation containing the "Gwinn Amendment" clearly indicated that they were intended to have a permanent effect, the language of the proviso containing that amendment was not similarly clear; (3) it was enacted in two succeeding appropriation bills. Id.

3. Certificate of non-membership

Refusal of tenant in a federally aided low-rent housing project to sign certificate, prepared by local housing authority to meet requirement of this chapter appropriating funds for low-cost housing projects, that neither he nor any member of his family occupying the apartment was a member of any organization contained in list prepared by United States Attorney General pursuant to government loyalty program, was not a sufficient ground for his eviction from leased premises where most of the organizations on the list were not designated as subversive and it was not shown that tenant was a member of any such organization. Kutcher v. Housing Authority of City of Newark, 1955, 119 A.2d 1, 20 N.J. 181.

Tenant, whose eviction from federally aided housing project was threatened because of her refusal to sign certificate to effect that neither she nor any other occupant of unit was member of organization designated as subversive by Attorney General, could maintain proceedings for order annulling New York City Housing Authority resolution requiring such certificate despite her failure to allege that she was member of a proscribed organization. Peters v. New York City Housing Authority, 1955, 147 N.Y.S.2d 859, 1 App.Div. 694.

Under former section 1411c of this title providing that no housing unit construct-

ed thereunder should be occupied by member of organization designated as subversive by Attorney General, city housing authority could not require tenant in federally aided housing project to certify that she was not member of any of the organizations set forth in Attorney General's Consolidated List of organizations, including many not designated subversive. Id.

In proceeding to annul resolution of New York City Housing Authority requiring, as condition of occupancy of federally aided housing projects, certification of nonmembership in organizations designated by Attorney General as subversive, wherein petitioner relied on alleged invalidity of resolution under Federal Constitution, but housing authority was held to have exceeded its statutory powers in requiring petitioner to certify that she was not member of list of organizations including many not designated subversive, petitioner's rights would be adequately protected regardless of constitutionality of resolution, and petition was properly dismissed. Id.

New York City Housing Authority resolution requiring tenants of federally aided housing projects to furnish certificate of nonmembership in organizations designated as subversive by Attorney General of United States was within purview of former section 1411c of this title requiring such certificates as conditions of occupancy. Weixel v. New York City Housing Authority, 1955, 143 N.Y.S.2d 589, 208 Misc. 246, reversed on other grounds 147 N.Y.S.2d 467, 1 A.D.2d 703.

Resolution of the Chicago Housing Authority requiring tenants in the federally aided projects to execute a prescribed certificate of nonmembership in subversive organizations was invalid as beyond the scope of the powers delegated to the Authority as having no rational connection with the Housing Authorities Act, S.H.A. ch. 67½, §§ 25, 25.01, 27. Chicago Housing Authority v. Blackman, 1954, 122 N.E.2d 522, 4 Ill.2d 319.

In proceeding to annul New York City Housing Authority Resolution which required tenants of federally aided housing projects to furnish, as condition of occupancy, certificate of nonmembership in any organization designated as subversive by Attorney General and which had been enacted pursuant to former section 1411c of this title which appeared to cover only housing projects aided under single Federal Act, case would be remitted to determine whether project in question was encompassed in said section authorizing action before court would pass on constitutionality of order. Peters v. New York City Housing Authority, 1954, 121 N.E.2d 529, 307 N.Y. 519.

§ 1411d. Submission of specifications by applicants

Every contract for a loan, grant, or contribution under this chapter, for the construction of a project shall require the submission of specifications with respect to such construction prior to the authorization for the award of the construction contract and the submission of data with respect to the acquisition of land prior to the authorization to acquire such land. Aug. 2, 1954, c. 649, Title VIII, § 815, 68 Stat. 647.

Historical Note

Codification. Section was enacted as a part of the Housing Act of 1954, and not as a part of the United States Housing Act of 1937, which comprises this chapter. In so far as section 815 of Act Aug. 2, 1954 related to Title I of the Housing Act of 1949, it is set out as section 1455a of this title.

§ 1412. Disposal of Federal projects—Purpose

(a) It is declared to be the purpose of Congress to provide for the orderly disposal of any low-rent-housing projects hereafter transferred to or acquired by the Administration through the sale or leasing of such projects as hereinafter provided; and in order to

continue the relief of Nation-wide unemployment and in order to avoid waste pending such sale or lease, to provide for the completion and temporary administration of such projects by the Administration.

Authorization

(b) As soon as practicable the Administration shall sell its Federal projects or divest itself of their management through leases.

Sale

(c) The Administration may sell a Federal project only to a public housing agency. Any such sale shall be for a consideration, in whatever form may be satisfactory to the Administration, equal at least to the amount which the Administration determines to be the fair value of the project for housing purposes of a low-rent character (making such adjustment as the Administration deems advisable for any annual contributions which may hereafter be given hereunder in aid of the project), less such allowance for depreciation as the Administration shall fix. Such project shall then become eligible for loans pursuant to section 1409 of this title, and either annual contributions pursuant to section 1410 of this title or a capital grant pursuant to section 1411 of this title. Any obligation of the purchaser accepted by the Administration as part of the consideration for the sale of such project shall be deemed a loan pursuant to section 1409 of this title.

Lease

(d) The Administration may lease any Federal low-rent-housing project, in whole or in part, to a public housing agency. The lessee of any project, pursuant to this subsection, shall assume and pay all management, operation, and maintenance costs, together with payments, if any, in lieu of taxes, and shall pay to the Administration such annual sums as the Administration shall determine are consistent with maintaining the low-rent character of such project. The provisions of section 303b of Title 40, shall not apply to any lease pursuant to this chapter.

Rentals pending sale or lease

(e) In the administration of any Federal low-rent-housing project pending sale or lease, the Administration shall fix the rentals at the amounts necessary to pay all management, operation, and maintenance costs, together with payments, if any, in lieu of taxes, plus such additional amounts as the Administration shall determine are consistent with maintaining the low-rent character of such project.

Transfer of labor supply centers, camps, homes, and other facilities; operation; disposal; rentals pending sale or lease; transfer without monetary consideration; finding and certification; preferences; Florida camps; mineral rights reserved; undisposed property

(f) There is transferred to the Administration, effective not later than sixty days after April 20, 1950, all right, title, and interest, including contractual rights and reversionary interests, held by the

Federal Government in and with respect to all labor supply centers, labor homes, labor camps, and facilities held in connection therewith and heretofore administered by the Secretary of Agriculture, for use as low-rent housing projects for families and persons of low income. Such projects when so transferred shall (notwithstanding any other provision of law) be low-rent housing projects subject to the provisions of this chapter, except as otherwise provided in this subsection. Such projects shall be operated for the principal purpose of housing persons engaged in agricultural work, and preference for occupancy in such projects shall be given to agricultural workers and their families; the rents in such projects shall not be higher than the rents which such tenants can afford; and the provisions of the second, third, and fourth sentences of section 1402 (1) of this title shall not be applicable to such projects. The Administration is authorized to enter into contracts for disposal of said projects by any of the methods provided in this chapter, including disposal of any such project to a public housing agency for a consideration consisting of the payment by the public housing agency to the Administration during a term of not less than twenty years of all income therefrom after deduction of the amounts necessary for (i) reasonable and proper costs of management, operation, maintenance, and improvement of such project; (ii) payments in lieu of taxes not in excess of 10 per centum of shelter rents; (iii) establishment and maintenance of reasonable and proper reserves; and (iv) the payment of currently maturing installments of principal and interest on any indebtedness incurred in connection with such project by the public housing agency with the approval of the Administration. Pending sale or lease of said projects to public housing agencies, the Administration may continue present leases and permits, or may enter into new leases with public bodies or nonprofit organizations for the operation of such projects. Pending sale of such projects the Administration may make any necessary improvements thereto and may pay any deficits incurred in their improvement and administration out of any of the funds available to it under this chapter. Appropriations to reimburse the Administration for any amounts expended pursuant to this subsection, in excess of the funds transferred with such projects, are authorized. Notwithstanding any other provision of law, upon the filing of a request therefor within eighteen months after August 7, 1956, the Administration shall relinquish, transfer, and convey, without monetary consideration, all of its rights, title, and interest in and with respect to any such project or any part thereof (including such land as is determined by the Administration to be reasonably necessary to the operation of such project, and including contractual rights to revenues, reserves, and other proceeds therefrom), (1) in the case of any State other than Florida, to any public housing agency whose area of operation includes the project, upon a finding and certification by the public housing agency (which shall be conclusive

upon the Administration) that the project is needed to house persons and families of low income and that preference for occupancy in the project will be given first to low-income agricultural workers and their families and second to other low-income persons and their families; and (2) in the case of Florida, to any public housing agency in the State whenever, under the laws of the State, such agency (A) is authorized to acquire and operate such project, (B) is required to give preference for occupancy in such project, first, to low-income agricultural workers and their families, and second, to other low-income persons and their families, (C) is required, in the event of the disposition of such project by sale or otherwise, to use the proceeds thereof and any available accumulated earnings to construct facilities (which shall be subject to the same preference as those specified in clause (B)) for occupancy by low-income agricultural workers and their families in the same area, and (D) is required, so long as it continues to own or operate such project, to have on its managing board one or more members whose principal occupation is farming. Upon the relinquishment and transfer of any such project it shall cease to be a low-rent project within the meaning of this chapter, and the Administration shall have no further jurisdiction over it, except that in any conveyance under the preceding sentence the Administration may reserve to the United States any mineral rights of whatsoever nature upon, in, or under the property, including such rights of access to and the use of such parts of the surface of the property as may be necessary for mining and saving the minerals. Any project, or part thereof not relinquished and conveyed pursuant to this subsection or under a contract for disposal pursuant to this subsection within eighteen months after August 7, 1956 shall be disposed of by the Administration pursuant to subsection (e) of section 1413 of this title, notwithstanding the parenthetical clause in such subsection. Sept. 1, 1937, c. 896, § 12, 50 Stat. 894; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Apr. 20, 1950, c. 94, Title II, § 205(b), 64 Stat. 73; Aug. 7, 1956, c. 1029, Title IV, § 405, 70 Stat. 1104.

Historical Note

1956 Amendment. Subsec. (f). Act Aug. 7, 1956 added provisions directing Administrator, upon the filing of a request within 18 months, to transfer farm-labor camps without monetary consideration to any public housing agency whose area of operation includes such project; provisions that the local agency submit finding and certification as to the low-rent need for the project and the preferences to be given in occupancy, and that such preference will be given first to low-income agricultural workers and second to other low-income persons; provisions relating to Florida camps; provisions reserving mineral rights to United States; and disposal of projects under section 1413(e) of this title if not disposed of within 18 months, pursuant to subsec. (f).

1950 Amendment. Subsec. (f). Act Apr. 20, 1950 added subsec. (f).

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

The word "Authority" was used in subsec. (f), which was added by Act Apr. 20, 1950, without regard to 1947 Reorg. Plan No. 3, which substituted "Administration" for "Authority".

Transferred Funds; Availability for Expenditure. Section 205(c) of Act Apr. 20, 1950 provided that: "All unexpended receipts (notwithstanding any limitations in the second proviso of title I of Public Law 76, Eightieth Congress [Act May 26, 1947, c. 82, Title I, 61 Stat. 109], under the heading of 'Farm Labor Supply Program') derived from the sales of labor supply centers, labor homes, labor camps, and facilities, and all other unexpended balances of funds available for the maintenance, operation, and liquidation of the properties transferred hereunder and for administrative expenses in connection therewith shall be transferred, upon the transfer of such properties, to the Public Housing Administration to be available, until expended, in accordance with the provisions of the United States Housing Act of 1937, as amended [this chapter]."

Legislative History: For legislative history and purpose of Act Apr. 20, 1950, see 1950 U.S.Code Cong.Service, p. 2021. See, also, Act Aug. 7, 1956, 1956 U.S.Code Cong. and Adm.News, p. 4509.

Notes of Decisions

Library references

United States ⊂=58.
C.J.S. United States §§ 75, 79.
C.J.S. Warehousemen and Safe Depositories § 60.

1. Lessee's authority

Where local housing authority was operating low-rent housing project under lease from United States Housing Authority, a governmental agency, provision in local housing authority's lease to tenant permitting termination of tenancy on 15 days' notice was valid and binding upon tenant in same manner as though lessor had been a private person rather than a governmental agency. Brand v. Chicago Housing Authority, C.C.A.Ill.1941, 120 F.2d 786.

Under this section and contract between United States Housing Authority, a governmental agency, and local housing authority, where a minimum and maximum schedule of rents for tenants was provided and lease to tenant was permitted only where net income of tenant did not exceed a designated ratio to the amount fixed as rental, and lease contract with tenant permitted termination of tenancy on 15 days' notice, the local housing authority was authorized to reduce rentals and thereby disqualify plaintiff tenants who had been selected and accepted as eligible under higher rental. Id.

The Philadelphia Housing Authority, in determining reasonableness of selection of tenants for housing project between white and colored races in conformity with neighborhood pattern, was at liberty to act with reference to the established usages, customs and traditions of the people, and with view to preservation of public peace and good order as well as promotion of their comfort, which was purpose for creation of the Authority. Favors v. Randall, D.C.Pa.1941, 40 F.Supp. 743.

Action of Philadelphia Housing Authority, in selecting tenants for housing project between white and colored races in conformity with neighborhood pattern, was reasonable, although percentage of colored persons certified would be considerably less than 40 per cent., which was shown by federal census to be proportion of colored persons living in slum areas and under unsanitary living conditions, where housing project was only one of three projects in city, and it appeared that there would be a greater preponderance of colored persons in occupancy of the various projects than their need entitled them to. Id.

Where public housing project was leased by United States Housing Authority to Buffalo Municipal Housing Authority, and Authority's board of directors adopted resolution that income limit for continued occupancy of residents of project should be established at statutory limit for apartment occupied by each resident or $1,750 per annum, whichever was lower, and it was not claimed that plaintiff tenants in project had annual incomes lower than $1,750, plaintiffs were not entitled to injunction pendente lite restraining Authorities from dispossessing plaintiffs. Wolfe v. U. S. Housing Authority, D.C.N.Y.1940, 36 F.Supp. 580.

That tenants in a public housing project erected pursuant to this chapter and McKinney's N. Y. Public Housing Law whose incomes exceeded the standard specified, would be inconvenienced and would

suffer financial loss through forced removal from apartments in project did not deny right of the Housing Authority to possession. Id.

2. Eviction proceedings

Under this section and contract between United States Housing Authority, a governmental agency, and local housing authority, where a minimum and maximum schedule of rents for tenants was provided and lease to tenant was permitted only where net income of tenant did not exceed a designated ratio to the amount fixed as rental and lease contract with tenant permitted termination of tenancy on 15 days' notice, eviction proceedings against tenant who had been selected and accepted as eligible under a high rental but who had been disqualified by reduction in rentals were not contrary to "public policy" as declared by this chapter and Smith-Hurd Ann.St. Ch. 67½, § 1 et seq., and § 27. Brand v. Chicago Housing Authority, C.C.A.Ill.1941, 120 F.2d 786.

3. Hearing

Under this section and contract between United States Housing Authority, a governmental agency, and local housing authority, where a minimum and maximum schedule of rents for tenants was provided and lease to tenant was permitted only where net income of tenant did not exceed a designated ratio to the amount fixed as rental and lease contract with tenant permitted termination of tenancy on 15 days' notice, plaintiff tenants, who had been selected and accepted as eligible under high rental, were not deprived of rights without "due process of law" because no hearing was allowed them upon matter of reduction in rental, which reduction rendered them ineligible as tenants. Brand v. Chicago Housing Authority, C.C.A.Ill.1941, 120 F. 2d 786.

§ 1413. Powers of Administration; miscellaneous—Foreclosure and other rights

(a) The Administration may foreclose on any property or commence any action to protect or enforce any right conferred upon it by any law, contract, or other agreement. The Administration may bid for and purchase at any foreclosure by any party or at any other sale, or (pursuant to section 1421a of this title or otherwise) acquire or take possession of any project which it previously owned or in connection with which it has made a loan, annual contribution, or capital grant; and in such event the Administration may complete, administer, pay the principal of and interest on any obligations issued in connection with such project, dispose of, and otherwise deal with, such projects or parts thereof, subject, however, to the limitations elsewhere in this chapter governing their administration and disposition.

Civil and criminal jurisdiction of States

(b) The acquisition by the Administration of any real property pursuant to this chapter shall not deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property; and, insofar as any such jurisdiction may have been taken away or any such rights impaired by reason of the acquisition of any property transferred to the Administration pursuant to section 1404(d) of this title, such jurisdiction and such rights are fully restored.

Payments in lieu of taxes

(c) The Administration may enter into agreements to pay annual sums in lieu of taxes to any State or political subdivision thereof

with respect to any real property owned by the Administration. The amount so paid for any year upon any such property shall not exceed the taxes that would be paid to the State or subdivision, as the case may be, upon such property if it were not exempt from taxation thereby.

Insurance

(d) The Administration may procure insurance against any loss in connection with its property and other assets (including mortgages), in such amounts, and from such insurers, as it deems desirable.

Sale or lease of non-project property

(e) The Administration may sell or exchange at public or private sale, or lease, any real property (except low-rent-housing projects, the disposition of which is governed elsewhere in this chapter) or personal property, and sell or exchange any securities or obligations, upon such terms as it may fix. The Administration may borrow on the security of any real or personal property owned by it, or on the security of the revenues to be derived therefrom, and may use the proceeds of such loans for the purposes of this chapter. Sept. 1, 1937, c. 896, § 13, 50 Stat. 894; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; July 15, 1949, c. 338, Title III, § 307(e), 63 Stat. 430.

Historical Note

1949 Amendment. Subsec. (a). Act July 15, 1949 allowed the Administration to complete, administer, pay the principal and interest on any obligation issued in connection with the project and dispose of, or otherwise deal with such projects.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

The word "Authority" was used in the amendment of this section by Act July 15, 1949, without regard to 1947 Reorg. Plan No. 3 which substituted "Administration" for "Authority".

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550.

Notes of Decisions

Library references

United States ⇐53(9).
C.J.S. United States § 70.

1. Insurance

The Authority is authorized under subsection (d) of this section to procure insurance or to set up insurance reserves to protect against such liability. 1938, 39 Op.Atty.Gen. 559.

2. Administrative findings

Subsec. (c) of this section makes payments in lieu of taxes entirely an "administrative function", and federal district court is without power to pass upon correctness of determination as made by Administrator. U. S. v. City of Milwaukee, D.C.Wis.1943, 49 F.Supp. 436, affirmed 140 F.2d 286, certiorari denied 64 S.Ct. 1047, 322 U.S. 735, 88 L.Ed. 1568.

§ 1413a. Recovery of possession of housing accommodations

Historical Note

Codification. Section Acts July 31, 1947, c. 418, § 2, 61 Stat. 705; Feb. 27, 1948, c. 77, § 3, 62 Stat. 37; Mar. 30, 1948, c. 161, Title III, § 304, 62 Stat. 100, postponed in certain cases until Apr. 1, 1949 the institution of any eviction actions or proceedings in connection with publicly operated housing accommodations.

Notes of Decisions

Notice 3
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1. State laws

Former section 1413a of this title did not preclude Housing Authority of City of Phoenix from maintaining an action to recover possession of its housing units, where such action was authorized by Code 1939, §§ 16—1604, 16—1605, 16—1622. Walton v. City of Phoenix, 1949, 208 P.2d 399, 69 Ariz. 26.

2. Recovery of possession

Under former section 1413a of this title which provided that no action by local public agency, which had been assisted by federal funds, to recover possession of housing accommodations should be maintained if in opinion of administering Authority such action would result in undue hardship for occupants or unless in opinion of such Authority other housing facilities were available, sole power to determine effect upon occupant and upon availability of other housing facilities was vested in the administering Authority. Columbus Metropolitan Housing Authority v. Stires, 1948, 84 N.E.2d 296, 84 Ohio App. 331.

Since phrase "other housing facilities" as used in former section 1413a of this title authorized the United States or any state or local public agency assisted by federal funds made available with respect to housing to recover possession of any housing accommodations where "other housing facilities" were available for occupants, included housing available for purchase as well as housing available for rent, Chicago Housing Authority could evict high-income tenant, though no substantial rental housing was available, where purchase housing was available and could be secured with a down payment of $1,000 or $1,500. Galloway v. Atchison, T. & S. F. Ry. Co., 1948, 82 N.E.2d 372, 335 Ill.App. 572.

3. Notice

Under former section 1413a of this title which provided that no proceeding by Housing Authority which had been assisted by federal funds to recover possession of any housing accommodation should be maintained if in opinion of administering Authority such proceeding would result in undue hardship for occupants, local Housing Authority's notice of termination of lease had nothing to do with "maintaining" the proceeding to evict and notice was not invalid although served before local Housing Authority had adopted resolution that no undue hardship would result to occupants as a result of being evicted. Columbus Metropolitan Housing Authority v. Stires, 1948, 84 N.E.2d 296, 84 Ohio App. 331.

Where lease held by tenants from local Housing Authority which had been assisted by federal funds required a 15 day notice in order to terminate lease, serving of notice of termination did not constitute part of proceedings in eviction within former section 1413a of this title which provided that no such proceeding should be maintained if in opinion of administering Authority such proceeding would result in undue hardship. Id.

§ 1414. Modification, amendment, or supersedure of contracts

Subject to the specific limitations or standards in this chapter governing the terms of sales, rentals, leases, loans, contracts for annual

contributions, contracts for capital grants, or other agreements, the Administration may, whenever it deems it necessary or desirable in the fulfillment of the purposes of this chapter, consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, amount of annual contribution, or any other term, of any contract or agreement of any kind to which the Administration is a party or which has been transferred to it pursuant to this chapter. When the Administration finds that it would promote economy or be in the financial interest of the Federal Government, any contract heretofore or hereafter made for annual contributions, loans, or both, may, with Presidential approval, be amended or superseded by a contract of the Administration so that the going Federal rate on the basis of which such annual contributions or interest rate on the loans, or both, respectively, are fixed shall mean the going Federal rate, as herein defined, on the date of Presidential approval of such amending or superseding contract: *Provided*, That contracts may not be amended or superseded in a manner which would impair the rights of the holders of any outstanding obligations of the public housing agency involved for which annual contributions have been pledged. Any rule of law contrary to this provision shall be deemed inapplicable. Sept. 1, 1937, c. 896, § 14, 50 Stat. 895; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; July 15, 1949, c. 338, Title III, § 304 (g), 63 Stat. 426.

Historical Note

1949 Amendment. Act July 15, 1949 inserted the second sentence.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

The word "Authority" was used in the amendment of this section by Act July 15, 1949, without regard to 1947 Reorg. Plan No. 3, which substituted "Administration" for "Authority".

Delegation of Functions. For delegation of functions, vested in the President by this section, to the Housing and Home Finance Administrator, see section 4(d) of Ex.Ord.No.10530, May 11, 1954, 19 F.R. 2709, set out as a note under section 301 of Title 3, The President.

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550.

Notes of Decisions

Library references

United States ⇐60.
C.J.S. United States § 83.

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1. Binding effect of contracts

A contract to pay annual contributions entered into by the Public Housing Administration in conformance with the provisions of the chapter is valid and binding upon the United States and the faith of the United States has been solemnly pledged to the payment of such contributions in the same terms its faith has been pledged to the payment of its interest-bearing obligations. 1953, 41 Op. Atty.Gen., May 15.

§ 1415. Preservation of low rents

In order to insure that the low-rent character of housing projects will be preserved, and that the other purposes of this chapter will be achieved, it is provided that—

Low-rent-housing projects

(1) When a loan is made pursuant to section 1409 of this title for a low-rent-housing project the Administration may retain the right, in the event of a substantial breach of the condition (which shall be embodied in the loan agreement) providing for the maintenance of the low-rent character of the housing project involved or in the event of the acquisition of such project by a third party in any manner including a bona-fide foreclosure under a mortgage or other lien held by a third party, to increase the interest payable thereafter on the balance of said loan then held by the Administration to a rate not in excess of the going Federal rate (at the time of such breach or acquisition) plus 2 per centum per annum or to declare the unpaid principal on said loan due forthwith.

Slum-clearance projects

(2) When a loan is made pursuant to section 1409 of this title for a slum-clearance project the Administration shall retain the right, in the event of the leasing or acquisition of such project by a third party in any manner including a bona-fide foreclosure under a mortgage or other lien held by a third party, to increase the interest payable thereafter on the balance of said loan then held by the Administration to a rate not in excess of the going Federal rate (at the time of such leasing or acquisition) plus 2 per centum per annum or to declare the unpaid principal on said loan due forthwith.

Annual contributions

(3) When a contract for annual contributions is made pursuant to section 1410 of this title, the Administration shall retain the right, in the event of a substantial breach of the condition (which shall be embodied in such contract) providing for the maintenance of the low-rent character of the housing project involved, to reduce or terminate the annual contributions payable under such contract. In the event of the acquisition of such project by a third party in any manner including a bona-fide foreclosure under a mortgage or other lien held by a third party, such annual contributions shall terminate.

Contractual aids

(4) The Administration may also insert in any contract for loans, annual contributions, capital grants, sale, lease, mortgage, or any other agreement or instrument made pursuant to this chapter, such other covenants, conditions, or provisions at [1] it may deem necessary in order to insure the low-rent character of the housing project involved: *Provided,* That any such contract for a substantial loan may

contain a condition requiring the maintenance of an open space or playground in connection with the housing project involved if deemed necessary by the Administration for the safety or health of children.

Limitation on dwelling-unit costs; modular measure principle

(5) Every contract made pursuant to this chapter for loans (other than preliminary loans), annual contributions, or capital grants for any low-rent housing project completed after January 1, 1948, shall provide that the cost for construction and equipment of such project (excluding land, demolition, and nondwelling facilities) on which the computation of any annual contributions under this chapter may be based shall not exceed $2,000 per room ($3,000 per room in the case of Alaska, or in the case of accommodations designed specifically for elderly families $3,000 per room and $3,500 per room in the case of Alaska): *Provided,* That if the Commissioner finds that in the geographical area of any project (i) it is not feasible under the aforesaid cost limitations to construct the project without sacrifice of sound standards of construction, design, and livability, and (ii) there is an acute need for such housing, he may prescribe in such contract cost limitations which may exceed by not more than $750 per room the limitations that would otherwise be applicable to such project hereunder. Every contract made pursuant to this chapter for loans (other than preliminary loans), annual contributions, or capital grants with respect to any low-rent housing project initiated after March 1, 1949, shall provide that such project shall be undertaken in such a manner that it will not be of elaborate or extravagant design or materials, and economy will be promoted both in construction and administration. In order to attain the foregoing objective, every such contract shall provide that no award of the main construction contract for such project shall be made unless the Administration, taking into account the level of construction costs prevailing in the locality where such project is to be located, shall have specifically approved the amount of such main construction contract. Every contract made pursuant to this chapter for loans, annual contributions, or capital grants, with respect to a project for which the preparation of plans, drawings, and specifications has not been started or contracted for prior to July 12, 1957, shall require that such plans, drawings, and specifications follow the principle of modular measure in every case deemed feasible by the public housing agency, in order that the housing may be built by conventional construction, on-site fabrication, factory pre-cutting, factory fabrication, or any combination of these construction methods.

Contracts covering more than one project

(6) Any contract for loans or annual contributions, or both, entered into by the Administration with a public housing agency, may cover one or more than one low-rent housing project owned by said

public housing agency; in the event such contract covers two or more projects, such projects may, for any of the purposes of this chapter and of such contract (including, but not limited to, the determination of the amount of the loan, annual contributions, or payments in lieu of taxes, specified in such contract), be treated collectively as one project.

Local responsibilities and determinations

(7) In recognition that there should be local determination of the need for low-rent housing to meet needs not being adequately met by private enterprise—

(a) The Administration shall not make any contract with a public housing agency for preliminary loans (all of which shall be repaid out of any moneys which become available to such agency for the development of the projects involved) for surveys and planning in respect to any low-rent housing projects initiated after March 1, 1949, (i) unless the governing body of the locality involved has by resolution approved the application of the public housing agency for such preliminary loan; and (ii) unless the public housing agency has demonstrated to the satisfaction of the Administration that there is a need for such low-rent housing which is not being met by private enterprise; and

(b) The Administration shall not make any contract for loans (other than preliminary loans) or for annual contributions pursuant to this chapter with respect to any low-rent housing project initiated after March 1, 1949, (i) unless the governing body of the locality involved has entered into an agreement with the public housing agency providing for the local cooperation required by the Administration pursuant to this chapter; (ii) unless the public housing agency has demonstrated to the satisfaction of the Administration that a gap of at least 20 per centum (except in the case of a displaced family or an elderly family) has been left between the upper rental limits for admission to the proposed low-rent housing and the lowest rents at which private enterprise unaided by public subsidy is providing (through new construction and available existing structures) a substantial supply of decent, safe, and sanitary housing toward meeting the need of an adequate volume thereof; and (iii) unless the public housing agency has demonstrated to the satisfaction of the Administration that there is a feasible method for the temporary relocation of the individuals and families displaced from the project site, and that there are or are being provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of such individuals and families, decent, safe, and sanitary dwellings equal

in number to the number of and available to such individuals and families and reasonably accessible to their places of employment.

Relocation payments; inclusion with development or acquisition cost for determination of loans and contributions; definition

(8) The Administration may authorize the cost of relocation payments made by public housing agencies to be included with the development or acquisition cost of any project for purposes of determining the amount of loans and annual contributions authorized to be made with respect to such project under sections 1409 and 1410 of this title, but such costs shall be separately stated as relocation costs. For purposes of this paragraph, a "relocation payment" is a payment (i) which is made to an individual, family, business concern, or nonprofit organization displaced on or after January 27, 1964, from a low-rent housing project site as a result of the acquisition of real property by a public housing agency, (ii) which is not otherwise authorized under any Federal law, and (iii) which is made only on such terms and conditions, and subject to such limitations, as are authorized (as of the time such payment is approved) under section 1465(b) or (c) of this title for relocation payments made to individuals, families, business concerns, or nonprofit organizations, as the case may be. Sept. 1, 1937, c. 896, § 15, 50 Stat. 895; 1947 Reorg. Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; July 31, 1947, c. 418, § 1, 61 Stat. 704; July 15, 1949, c. 338, Title III, §§ 301, 303, 304(j), 63 Stat. 422, 424, 427; Aug. 2, 1954, c. 649, Title IV, § 401(3), (4), 68 Stat. 631; Aug. 7, 1956, c. 1029, Title IV, § 404 (c), 70 Stat. 1104; July 12, 1957, Pub.L. 85–104, Title IV, § 401(b), (c), 71 Stat. 302; Sept. 23, 1959, Pub.L. 86–372, Title V, §§ 503(b), 506, 73 Stat. 680, 681; June 30, 1961, Pub.L. 87–70, Title II, §§ 204(b), 205(b), 206(a), 75 Stat. 164; Sept. 2, 1964, Pub.L. 88–560, Title IV, §§ 401(c), 405(a), 406, 78 Stat. 794, 795.

[1] So in original.

Historical Note

1964 Amendment. Par. (7) (b). Pub.L. 88–560, §§ 401(c), 405(a), substituted "displaced family" for "family displaced by urban renewal or other governmental action", and added clause (iii).

Par. (8). Pub.L. 88–560, § 406, added par. (8).

1961 Amendment. Par. (5). Pub.L. 87–70, § 206(a) (1), (2), inserted the phrase "on which the computation of any annual contributions under this chapter may be based" following "non-dwelling facilities)", and increased the maximum limitation in the case of Alaska and in the case of accommodations designed specifically for elderly persons from $2,500 to $3,000 per room, and in the case of accommodations in Alaska designed specifically for elderly persons from $2,500 to $3,500 per room.

Par. (6). Pub.L. 87–70, § 206(a) (3), redesignated former par. (9) as par. (6) and eliminated former par. (6) which related to the payment of excess dwelling-unit costs.

Par. (7) (b). Pub.L. 87–70, § 206(a) (4), substituted the parenthetical phrase "(except in the case of a family displaced by urban renewal or other governmental action or an elderly family)" for "(or 5 per centum in the case of any family entitled to a first preference as provided in section 1410(g) of this title)."

Par. (8). Pub.L. 87–70, § 205(b), repealed former par. (8) which required

all contracts for annual contributions for low-rent housing projects to contain certain conditions as to income limitations, admission policies and preferences. See section 1410(g) of this title.

Par. (9). Pub.L. 87–70, § 206(a) (3), redesignated par. (9) as (6).

Par. (10). Pub.L. 87–70, § 204(b), redesignated former par. (10) of this section, which was added by Pub.L. 86–372, § 507, as par. (i) of section 10 of Act Sept. 1, 1937, which provisions are now contained in section 1410(i) of this title.

1959 Amendment. Par. (7) (b). Pub. L. 86–372, § 503(b), inserted parenthetical clause "(or 5 per centum in the case of any family entitled to a first preference as provided in section 1410(g) of this title)."

Par. (8) (b). Pub.L. 86–372, § 506, substituted "October 1, 1961" for "March 1, 1959."

1957 Amendment. Par. (5). Pub.L. 85–104 raised the per-room cost limits from $1,750 to $2,000 for regular units, and from $2,250 to $2,500 for elderly person units, and added sentence requiring public housing plans and specifications to follow the principle of modular measure.

1956 Amendment. Par. (5). Act Aug. 7, 1956 inserted after "Alaska", the words "or $2,250 in the case of accommodations designed specifically for elderly families".

1954 Amendment. Par. (8) (b). Act Aug. 2, 1954, substituted in clause (ii) "or was to be displaced by any low-rent housing project or by any public slum clearance, redevelopment or urban renewal project, or through action of a public body or court, either through the enforcement of housing standards or through the demolition, closing, or improvement of a dwelling unit or units" for "or was to be displaced by another low-rent housing project or by a public slum-clearance or redevelopment project"; and, substituted at the end thereof "not later than March 1, 1959" for "not later than five years after March 1, 1949".

1949 Amendment. Par. (5). Act July 15, 1949, § 303, changed limitation from $4000 per family-dwelling unit or $1000 per room to $1750 per room in the United States and $2500 per room in Alaska, and also allowed the Administrator to exceed this limitation up to $750 per room in certain instances.

Pars. (7), (8). Acts July 15, 1949, § 301, added pars. (7) and (8).

Par. (9). Act July 15, 1949, § 304(j), added par. (9).

1947 Amendment. Par. (6). Act July 31, 1947 added par. (6).

Transfer of Functions. "Administration" was substituted for "Authority" throughout this section by 1947 Reorg. Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

The words "Authority" and "Administrator" were used in the amendments of this section by Act July 15, 1949 and Pub.L. 86–372 without regard to 1947 Reorg.Plan No. 3, which substituted "Administration" for "Authority" and "Commissioner" for "Administrator".

Application for Preliminary Loans Approved Prior to September 2, 1964. Section 405(b) of Pub.L. 88–560 provided that: "The amendments made by subsection (a) [amending par. (7) (b) of this section] shall not be applicable to any project for which an application for preliminary loan has been approved by the local governing body prior to the date of the enactment of this Act [Sept. 2, 1964]."

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550. See, also, Act Aug. 7, 1956, 1956 U.S.Code Cong. and Adm.News, p. 4509; Pub.L. 85–104, 1957 U.S.Code Cong. and Adm.News, p. 1319; Pub.L. 86–372, 1959 U.S.Code Cong. and Adm.News, p. 2844; Pub.L. 87–70, 1961 U.S.Code Cong. and Adm.News, p. 1923.

Notes of Decisions

Library references
Health ⇐32.
C.J.S. Health § 22 et seq.

1. Cooperation agreement

Cooperation agreement for urban redevelopment is not a substitute for legislative action of municipality. Bracey v. City of Long Branch, 1962, 179 A.2d 63, 73 N.J.Super. 91.

Where the city of Los Angeles was given discretionary power to determine initially the need for housing authority to

function and to give approval to low-rent housing project, after adoption by the city of the housing program and exercise thereof pursuant to the co-operation agreement which was required under this section, the city and the housing authority had nothing left to do, but to perform administrative duties, and thereafter the city could not refuse to co-operate and thereby decline to exercise its power to effect completion of the project, except as might be otherwise specifically provided for by statute under which it was operating. Housing Authority of City of Los Angeles v. City of Los Angeles, 1952, 243 P.2d 515, 38 Cal.2d 853, certiorari denied 73 S.Ct. 46, 344 U.S. 836, 97 L.Ed. 651.

2. Condition precedent

Par. (7) of this section, requiring that there be a local determination that there is a need for low-rent housing before Public Housing Administration shall make any contract with a public housing agency for preliminary loans, is a condition precedent which prevents Public Housing Administration from entering into any contract with a local agency till there has been a determination of the need for low-rent housing by the appropriate local administration, and after the condition has been met, Public Housing Administration is free to enter into agreements and contracts with local agencies. State ex rel. Helena Housing Authority v. City Council of City of Helena, 1952, 242 P.2d 250, 125 Mont. 592.

3. Eligibility

In action to declare plaintiffs' rights in regard to eligibility for certain public housing, evidence failed to establish plaintiff made an application for admission to a public housing project, or that defendants refused plaintiff any preferential right of occupancy under this chapter, or that as a matter of law she was entitled to statutory preference. Heyward v. Public Housing Administration, D.C.Ga.1957, 154 F.Supp. 589, affirmed 257 F.2d 73, certiorari denied 79 S.Ct. 315, 358 U.S. 928, 3 L.Ed.2d 302.

4. Persons liable

Where Housing Authority and City entered into an agreement that City would furnish to Authority services being furnished without charge to other inhabitants who did not at that time pay any sewage charges, Housing Authority and not City was liable for service charges made by subsequently created Sewerage Authority for sewage treatment where City inhabitants also paid service charges. Jersey City Sewerage Authority v. Housing Authority of City of Jersey City, 1963, 190 A.2d 870, 40 N.J. 145.

§ 1416. Labor protection

In order to protect labor standards—

Minimum wages; bonds of contractors

(1) The provisions of sections 276a to 276a—5 and sections 270–270d of Title 40, shall apply to contracts in connection with the development or administration of Federal projects and the furnishing of materials and labor for such projects: *Provided*, That suits shall be brought in the name of the Administration and that the Administration shall itself perform the duties prescribed by sections 276a—2(a) and 270c of Title 40.

Wages to conform to local rates

(2) Any contract for loans, annual contributions, capital grants, sale, or lease pursuant to this chapter shall contain a provision requiring that not less than the salaries or wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Administration, shall be paid to all architects, technical engineers, draftsmen, and technicians, employed in the development and to all maintenance laborers and mechanics employed in the administration of the low-rent housing or slum-clearance project involved; and shall also contain a

provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, shall be paid to all laborers and mechanics employed in the development of the project involved; and the Administration shall require certification as to compliance with the provisions of this subsection prior to making any payment under such contract.

Hours

(3) Sections 324 and 325 of Title 40 shall apply to contracts of the Administration for work in connection with the development and administration of Federal projects.

Workmen's compensation

(4) The benefits of sections 751–756, 757–781, 783–791, and 793 of Title 5 shall extend to officers and employees of the Administration.

Applicability of "kick back" provisions

(5) The provisions of sections 276b and 276c of Title 40, shall apply to any low-rent-housing or slum-clearance project financed in whole or in part with funds made available pursuant to this chapter.

(6) Repealed. Aug. 2, 1954, c. 649, Title IV, § 404, 68 Stat. 633. Sept. 1, 1937, c. 896, § 16, 50 Stat. 896; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; July 15, 1949, c. 338, Title III, § 307(f), 63 Stat. 430; Aug. 2, 1954, c. 649, Title IV, § 404, 68 Stat. 633.

Historical Note

References in Text. The Davis-Bacon Act, referred to in subd. (2), is classified to sections 276a to 276a—5 of Title 40, Public Buildings, Property, and Works.

Section 276b of Title 40, referred to in par. (5), was repealed by Act June 25, 1948, c. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948 and is covered by section 874 of Title 18, Crimes and Criminal Procedure.

1954 Amendment. Par. (6). Act Aug. 2, 1954 repealed subd. (6) under which contractors were required to submit monthly reports to the Secretary of Labor.

1949 Amendment. Par. (2). Act July 15, 1949 inserted the phrase "and in such event * * * of the project involved;".

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

The word "Authority" was used in the amendment of this section by Act July 15, 1949, without regard to 1947 Reorg. Plan No. 3, which substituted "Administration" for "Authority".

Enforcement of Labor Standards. Labor standards under provisions of this section to be prescribed and enforced by Secretary of Labor, see 1950 Reorg.Plan No. 14, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, set out in note under section 133z—15 of Title 5, Executive Departments and Government Officers and Employees.

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550.

Notes of Decisions

State authority 2
State wage orders 3
Wage standards 1

Library references

Labor Relations ⟸1051, 1268.
C.J.S. Master and Servant §§ 14, 80, 151 (24), 151(25).

1. Wage standards

The provision of this section requiring wages to conform to local rates implies that, as to maintenance employees, the wage standards generally "prevailing in the locality" for such employees are to be applied, whereas, as to at least some classes of development employees, local wage standards in construction field are to govern, and such provision directs Public Housing Administration to determine wage standards subsequent to a determination under applicable state law, but does not require that Administration be controlled by state determination. Commissioner of Labor and Industries v. Boston Housing Authority, Mass.1963, 188 N.E.2d 150.

2. State authority

In determining whether orders of Commissioner of Labor and Industries requiring Boston Housing Authority substantially to increase its wage expense were void as to federally aided projects, the authority, acting under Public Housing Administration supervision with consent of Legislature, is participating in performance of same federal function as PHA during its operation of projects. Commissioner of Labor and Industries v. Boston Housing Authority, Mass.1963, 188 N.E.2d 150.

M.G.L.A. c. 121, § 20T, directing Commissioner of Labor and Industries to set wage rates of housing authority employees requires authority to include in its operating budgets estimated wage expenditures in accordance with valid wage rate orders of Commissioner, if such budget items are approved by Public Housing Administration, and PHA disapproval will relieve authority of necessity of compliance with Commissioner's orders. Id.

3. State wage orders

The potential conflict of orders of Commissioner of Labor and Industries in setting wage rates for housing authority employees with Public Housing Administration's expenditure control over federal aid projects has no relevance to such orders as applied to projects in which there is no federal participation, and hence Commissioner was entitled to have his orders, if otherwise valid, enforced by injunction as to projects concerning which no PHA contract was in effect. Commissioner of Labor and Industries v. Boston Housing Authority, Mass.1963, 188 N.E.2d 150.

§ 1417. Capital stock of Authority

Historical Note

Codification. Section, Act Sept. 1, 1937, c. 896, § 17, 50 Stat. 897, related to capital stock of the Authority, and has been omitted under the authority of the 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, which consolidated the United States Housing Authority with other agencies into the Housing and Home Finance Agency, changed the name of such Authority to the Public Housing Administration, abolished the office of the Administrator, and transferred his functions to the Public Housing Commissioner. See 1947 Reorg. Plan No. 3, pertinent provisions of which are set out under former section 1403 of this title.

§ 1418. Availability of receipts and assets

All receipts and assets of the Administration shall be available for the purposes of this chapter until expended. Sept. 1, 1937, c. 896, § 18, 50 Stat. 897; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

Historical Note

Codification. Provisions which related to an appropriation of $26,000,000 for fiscal year 1938, which was to remain available for purposes of this chapter until expended, were omitted as executed.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

§ 1419. Allocation of other funds to Administration

Any funds available under any Act of Congress for allocation for housing or slum clearance may, in the discretion of the President, be allocated to the Administration for the purposes of this chapter. Sept. 1, 1937, c. 896, § 19, 50 Stat. 897; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

Historical Note

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

§ 1420. Issuance of obligations by Administration; amount, form, and denominations; interest rate; purchase and sale by Treasury; public debt transactions

The Administration may issue and have outstanding at any one time notes and other obligations for purchase by the Secretary of the Treasury in an amount not to exceed $1,500,000,000. Such notes or other obligations shall be in such forms and denominations, shall have such maturities, and shall be subject to such terms and conditions as may be prescribed by the Administration with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the notes or other obligations by the Administration. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations of the Administration issued hereunder and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sept. 1, 1937, c. 896, § 20, 50 Stat. 898; June 21, 1938, c. 554, Title VI, §

602, 52 Stat. 820; Oct. 30, 1941, c. 467, 55 Stat. 759; 1947 Reorg. Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; July 15, 1949, c. 338, Title III, § 304(h), 63 Stat. 427.

Library references: United States ⇐53(9); C.J.S. United States § 70.

Historical Note

References in Text. The Second Liberty Bond Act, as amended, referred to in the text, is Act Sept. 24, 1917, c. 56, 40 Stat. 288, as amended, which is classified to sections 745, 752–754b, 757, 757b–758, 760, 764–766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

1949 Amendment. Act July 15, 1949 amended section generally by omitting subsections, and increasing the amount of obligations which may be issued from $800,000,000 to $1,500,000,000.

1941 Amendment. Subsec. (a). Act Oct. 30, 1941 amended former subsec. (a) to exclude from the amount of obligations authorized any obligations which might be issued for refunding purposes.

1938 Amendment. Subsec. (a). Act June 21, 1938, amended former subsec. (a) by substituting a general authorization to issue obligations in a maximum amount of $800,000,000 for previous maximum authorizations of $100,000,000 on or after September 1, 1937, an additional $200,000,000 on or after July 1, 1938, and an additional $200,000,000 on or after July 1, 1939.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

The word "Authority" was used in the amendment of this section by Act July 15, 1949, without regard to 1947 Reorg. Plan No. 3, which substituted "Administration" for "Authority".

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550.

Cross References

United States obligations and evidences of ownership issued after Mar. 27, 1942, as subject to Federal taxation, see section 742a of Title 31, Money and Finance.

§ 1421. Deposit of funds; limitation on aid to particular State—Idle moneys

(a) Any money of the Administration not otherwise employed may be deposited, subject to check, with the Treasurer of the United States or in any Federal Reserve bank, or may be invested in obligations of the United States or used in the purchase or retirement or redemption of any obligations issued by the Administration.

Federal Reserve banks as financial agents

(b) The Federal Reserve banks are authorized and directed to act as depositories, custodians, and fiscal agents for the Administration in the general exercise of its powers, and the Administration may reimburse any such bank for its services in such manner as may be agreed upon.

Administration as financial agent of Government

(c) The Administration may be employed as a financial agent of the Government. When designated by the Secretary of the Treasury, and subject to such regulations as he may prescribe, the Ad-

ministration shall be a depository of public money, except receipts from customs.

(d) Repealed. Pub.L. 87–70, Title II, § 204(c), June 30, 1961, 75 Stat. 164.

Sept. 1, 1937, c. 896, § 21, 50 Stat. 898; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; July 15, 1949, c. 338, Title III, § 307(g), 63 Stat. 431; Aug. 7, 1956, c. 1029, Title IV, § 403, 70 Stat. 1103; June 30, 1961, Pub.L. 87–70, Title II, § 204 (c), 75 Stat. 164.

Historical Note

1961 Amendment. Subsec. (d). Pub.L. 87–70 repealed former subsec. (d) which provided that not more than 15 per centum of the total annual amount of $336,000,000 provided in this chapter for annual contributions, nor more than 15 per centum of the amounts provided for in this chapter for grants, shall be expended within any one State. See section 1410 (e) of this title.

1956 Amendment. Subsec. (d). Act Aug. 7, 1956 substituted "15" for "10" in two places.

1949 Amendment. Subsec. (d). Act July 15, 1949 inserted the specific amount of $336,000,000.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

Legislative History: For legislative history and purpose of Act Aug. 7, 1956, see 1956 U.S.Code Cong. and Adm.News, p. 4509. See, also, Pub.L. 87–70, 1961 U.S. Code Cong. and Adm.News, p. 1923.

Notes of Decisions

Library references
Municipal Corporations ⇐921(1).
C.J.S. Municipal Corporations §§ 1930–1933.

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1. Construction

The former limitation in former subsec. (d) of this section that "Not more than 10 per centum of the funds provided for in this chapter * * * shall be expended within any one State," applied to the total amount available for loans and not to the amount available in any one fiscal year. 1938, 39 Op.Atty.Gen. 153.

§ 1421a. Private financing—Sale of public housing agencies' bonds

To facilitate the enlistment of private capital through the sale by public housing agencies of their bonds and other obligations to others than the Administration, in financing low-rent housing projects, and to maintain the low-rent character of housing projects—

Contracts for annual contributions; terms and conditions

(a) Every contract for annual contributions (including contracts which amend or supersede contracts previously made) may provide that—

(1) upon the occurrence of a substantial default in respect to the covenants or conditions to which the public housing agency

is subject (as such substantial default shall be defined in such contract), the public housing agency shall be obligated at the option of the Administration, either to convey title in any case where, in the determination of the Administration (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of this chapter, or to deliver possession to the Administration of the project, as then constituted, to which such contract relates;

(2) the Administration shall be obligated to reconvey or to redeliver possession of the project, as constituted at the time of reconveyance or redelivery, to such public housing agency or to its successor (if such public housing agency or a successor exists) upon such terms as shall be prescribed in such contract and as soon as practicable: (i) after the Administration shall be satisfied that all defaults with respect to the project have been cured, and that the project will, in order to fulfill the purposes of this chapter, thereafter be operated in accordance with the terms of such contract; or (ii) after the termination of the obligation to make annual contributions available unless there are any obligations or covenants of the public housing agency to the Administration which are then in default. Any prior conveyances and reconveyances, deliveries and redeliveries of possession shall not exhaust the right to require a conveyance or delivery of possession of the project to the Administration pursuant to paragraph (1) of this subsection, upon the subsequent occurrence of a substantial default.

Same; fulfillment of conditions; maximum annual contributions

(b) Whenever such contract for annual contributions shall include provisions which the Administration, in said contract, determines are in accordance with subsection (a) of this section, and the annual contributions, pursuant to such contract, have been pledged by the public housing agency as security for the payment of the principal and interest on any of its obligations, the Administration (notwithstanding any other provisions of this chapter) shall continue to make annual contributions available for the project so long as any of such obligations remain outstanding, and may covenant in such contract (in lieu of the provision required by the first sentence of section 1415(3) of this title and notwithstanding any other provisions of law) that in any event such annual contributions shall in each year be at least equal to an amount which, together with such income or other funds as are actually available from the project for the purpose at the time such annual contribution is made, will suffice for the payment of all installments, falling due within the next succeeding twelve months, of principal and interest on the obligations for which the annual contributions provided for in the contract shall have been pledged as security: *Provided*, That such annual contributions shall not be in excess of the maximum sum

determined pursuant to the first proviso of section 1410(b) of this title, or, where applicable, the second proviso of section 1410(c) of this title; and in no case shall such annual contributions be in excess of the maximum sum specified in the contract involved, nor for longer than the remainder of the maximum period fixed by the contract.

Incontestability of obligations; pledge of full faith and credit

(c) Obligations of a public housing agency which (1) are secured either (A) by a pledge of a loan under an agreement between such public housing agency and the Administration, or (B) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Administration, and (2) bear, or are accompanied by, a certificate of the Administration that such obligations are so secured, shall be incontestable in the hands of a bearer, and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Administration as security for such obligations. Sept. 1, 1937, c. 896, § 22, as added July 15, 1949, c. 338, Title III, § 304(b), 63 Stat. 424, and amended June 30, 1961, Pub.L. 87–70, Title III, § 302 (b), 75 Stat. 166.

Historical Note

1961 Amendment. Subsec. (c). Pub.L. 87–70 added subsec. (c).

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

The word "Authority" was used in this section by Act July 15, 1949, and in the amendment of this section by Pub.L. 87–70 without regard to 1947 Reorg.Plan No. 3, which substituted "Administration" for "Authority".

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550. See, also, Pub.L. 87–70, 1961 U.S.Code Cong. and Adm.News, p. 1923.

Notes of Decisions

1. Contracts

When a housing authority has incurred expense and has contracted for federal funds or credit in reliance upon a cooperation agreement entered into with a city, that contract binds the city, and such contract cannot be abrogated by the city although it can be modified or terminated as permitted by applicable statutes. Housing Authority of City of Oakland v. City of Oakland, Cal.App.1963, 35 Cal. Rptr. 527.

City, by voluntarily approving a site for a housing project, thereby extended cooperation agreement it had entered into with a housing authority, and made it specifically applicable to such site, and city could not thereafter abrogate or abandon its contract by unilateral action. Id.

§ 1422. Penalties; applicability of general penal statutes concerning moneys

All general penal statutes relating to the larceny, embezzlement, or conversion or to the improper handling, retention, use, or dis-

posal of public moneys or property of the United States shall apply to the moneys and property of the Administration and to moneys and properties of the United States entrusted to the Administration. Sept. 1, 1937, c. 896, § 23, formerly § 22, 50 Stat. 899; 1947 Reorg. Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, renumbered July 15, 1949, c. 338 Title III, § 307(h), 63 Stat. 431.

Historical Note

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

§§ 1423–1426. Repealed. June 25, 1948, c. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Historical Note

Sections, Act Sept. 1, 1937, c. 896, §§ 24–27, formerly §§ 23–26, 50 Stat. 899, renumbered July 15, 1949, c. 338, Title III, § 307(h), 63 Stat. 431, related to penalties for false entries and reports, defrauding or hindering, concealment of interest in property, and unlawful use of name, and are covered by section 1012 of Title 18, Crimes and Criminal Procedure.

§ 1427. Conflict with other laws

Wherever the application of the provisions of this chapter conflicts with the application of the provisions of sections 421–425 and 431–434 of Title 40 or any other Act of the United States dealing with housing or slum clearance, or any Executive order, regulation, or other order thereunder, the provisions of this chapter shall prevail. Sept. 1, 1937, c. 896, § 28, formerly § 27, 50 Stat. 899, renumbered July 15, 1949, c. 338, Title III, § 307(h), 63 Stat. 431.

Historical Note

References in Text. Sections 431–434 of Title 40, referred to in the text, were repealed by Act Aug. 14, 1946, c. 964, § 2 (a), (1), 60 Stat. 1062. See chapter 50 of Title 7, Agriculture.

§ 1428. Availability of funds for District of Columbia

The President is authorized to make available to the National Capital Housing Authority, from any funds appropriated or otherwise provided to carry out the purposes of this chapter, such sums as he deems necessary to carry out the purposes of the District of Columbia Alley Dwelling Act. Such sums shall be deposited in the Conversion of Inhabited Alleys Fund and thereafter shall remain immediately available for the purposes of the District of Columbia Alley Dwelling Act. Sept. 1, 1937, c. 896, § 29, formerly § 28, 50 Stat. 899; 1943 Ex.Ord.No.9344, May 21, 1943, 8 F.R. 6805, renumbered July 15, 1949, c. 338, Title III, § 307(h), 63 Stat. 431.

Library references: District of Columbia ⇐12; C.J.S. District of Columbia § 12.

Historical Note

References in Text. The District of Columbia Alley Dwelling Act, referred to in the text, is Act June 12, 1934, c. 465, 48 Stat. 930, as amended, which is set out in D.C.Code, 1961, §§ 5—103 to 5—105, 5—106 to 5—116.

Change of Name. The Alley Dwelling Authority was redesignated the "National Capital Housing Authority" by 1943 Ex.Ord.No.9344.

§ 1429. Separability of provisions

Notwithstanding any other evidences of the intention of Congress, it is declared to be the controlling intent of Congress that if any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. Sept. 1, 1937, c. 896, § 30, formerly § 29, 50 Stat. 899, renumbered July 15, 1949, c. 338, Title III, § 307(h), 63 Stat. 431.

Library references: Statutes ⇐64(2); C.J.S. Statutes § 96 et seq.

§ 1430. Short title

This chapter may be cited as the "United States Housing Act of 1937". Sept. 1, 1937, c. 896, § 31, formerly § 30, 50 Stat. 899, renumbered July 15, 1949, c. 338, Title III, § 307(h), 63 Stat. 431.

§ 1431. Administration representation at non-Federal project sites; reimbursement of expenses

Necessary expenses of providing representatives of the Public Housing Administration at the sites of non-Federal projects in connection with the construction of such non-Federal projects by public housing agencies with the aid of the Administration, shall be compensated by such agencies by the payment of fixed fees which in the aggregate in relation to the development costs of such projects will cover the costs of rendering such services, and expenditures by the Administration for such purpose shall be considered non-administrative expenses, and funds received from such payments may be used only for the payment of necessary expenses of providing representatives of the Administration at the sites of non-Federal projects or for administrative expenses of the Administration not in excess of the amount authorized by the Congress. Pub.L. 88–507, Title II, § 201, Aug. 30, 1964, 78 Stat. 665.

Historical Note

Codification. Section was not enacted as a part of the United States Housing Act of 1937 which comprises this chapter.

Similar Provisions. Section is from the Independent Offices Appropriation Act, 1965. Similar provisions were contained in the following prior Appropriation Acts:

1963—Dec. 19, 1963, Pub.L. 88-215, Title II, § 201, 77 Stat. 447.
1962—Oct. 3, 1962, Pub.L. 87-741, Title II, § 201, 76 Stat. 739.
1961—Aug. 17, 1961, Pub.L. 87-141, Title II, § 201, 75 Stat. 363.
1960—July 12, 1960, Pub.L. 86-626, Title II, § 201, 74 Stat. 444.
1959—Sept. 14, 1959, Pub.L. 86-255, Title II, § 201, 73 Stat. 517.
1958—Aug. 28, 1958, Pub.L. 85-844, Title II, § 201, 72 Stat. 1081.
1957—June 29, 1957, Pub.L. 85-69, Title II, § 201, 71 Stat. 241.
1956—June 27, 1956, c. 452, Title II, § 201, 70 Stat. 355.
1955—June 30, 1955, c. 244, Title II, § 201, 69 Stat. 215.
1954—June 24, 1954, c. 359, Title II, § 201, 68 Stat. 297.
1953—July 31, 1953, c. 302, Title II, § 201, 67 Stat. 315.
1952—July 5, 1952, c. 578, Title III, § 301, 66 Stat. 417.
1951—Aug. 31, 1951, c. 376, Title IV, § 401, 65 Stat. 289.
1950—Sept. 6, 1950, c. 896, ch. VIII, Title II, § 201, 64 Stat. 723.
1949—Aug. 24, 1949, c. 506, Title II, § 201, 63 Stat. 659.
1948—June 30, 1948, c. 773, Title II, § 201, 62 Stat. 1190.
1947—July 30, 1947, c. 358, Title II, § 201, 61 Stat. 579.
1946—July 20, 1946, c. 589, Title II, 60 Stat. 592.
1945—May 3, 1945, c. 106, Title I, § 1, 59 Stat. 124.

§ 1432. Repealed. July 15, 1949, c. 338, Title VI, § 606, 63 Stat. 441

Historical Note

Section, Act Aug. 10, 1948, c. 832, Title V, § 503, 62 Stat. 1285, related to State low-rent or veterans' housing projects, and is covered by section 1433 of this title.

§ 1433. Conversion of State low-rent or veterans' housing projects to Federal projects

Any low-rent or veterans' housing project undertaken or constructed under a program of a State or any political subdivision thereof shall be approved as a low-rent housing project under the terms of this chapter, if (a) a contract for State financial assistance for such project was entered into on or after January 1, 1948, and prior to January 1, 1950, (b) the project is or can become eligible for assistance by the Public Housing Administration in the form of loans and annual contributions under the provisions of this chapter, and (c) the public housing agency operating the project in the State makes application to the Public Housing Administration for Federal assistance for the project under the terms of this chapter: *Provided*, That loans made by the Public Housing Administration for the purpose of so converting the project to a project with Federal assistance shall be deemed, for the purposes of the provisions of section 1409 of this title and other sections of this chapter, to be loans to assist the development of the project. July 15, 1949, c. 338, Title VI, § 606, 63 Stat. 440.

Library references: United States ⇐55; C.J.S. United States §§ 71, 73.

Historical Note

Codification. Section was enacted as a part of the Housing Act of 1949 and not as a part of the United States Housing Act of 1937 which comprises this chapter.

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550.

§ 1434. Records; contents; examination and audit

Every contract between the Housing and Home Finance Agency (or any official or constituent thereof) and any person or local body (including any corporation or public or private agency or body) for a loan, advance, grant, or contribution under this chapter, the Housing Act of 1949, as amended, or any other Act shall provide that such person or local body shall keep such records as the Housing and Home Finance Agency (or such official or constituent thereof) shall from time to time prescribe, including records which permit a speedy and effective audit and will fully disclose the amount and the disposition by such person or local body of the proceeds of the loan, advance, grant, or contribution, or any supplement thereto, the capital cost of any construction project for which any such loan, advance, grant, or contribution is made, and the amount of any private or other non-Federal funds used or grants-in-aid made for or in connection with any such project. No mortgage covering new or rehabilitated multifamily housing (as defined in section 1715r of Title 12) shall be insured unless the mortgagor certifies that he will keep such records as are prescribed by the Federal Housing Commissioner at the time of the certification and that they will be kept in such form as to permit a speedy and effective audit. The Housing and Home Finance Agency or any official or constituent agency thereof and the Comptroller General of the United States shall have access to and the right to examine and audit such records. This section shall become effective on the first day after the first full calendar month following the date of approval of the Housing Act of 1961. Aug. 2, 1954, c. 649, Title VIII, § 814, 68 Stat. 647; June 30, 1961, Pub.L. 87–70, Title IX, § 908, 75 Stat. 191.

Library references: Records ⇐14; C.J.S. Records § 35 et seq.

Historical Note

References in Text. For distribution of the Housing Act of 1949, as amended, referred to in the text, see note under section 1441 of this title.

The first day after the first full calendar month following the date of approval of the Housing Act of 1961, referred to in the text, probably means Aug. 1, 1961, which is the first day after the first full calendar month following approval of Pub.L. 87–70, which was approved on June 30, 1961.

Codification. Section was enacted as a part of the Housing Act of 1954, and not as part of the United States Housing Act of 1937, which comprises this chapter. It consists of the first and third sentences of section 814 of said Housing Act of 1954 (Act Aug. 2, 1954). In so far as the same sentences related to the Housing Act of 1949, they are set out as section 1446 of this title. The second sentence of section 814, along with the third sentence, is set out as section 1715s of Title 12, Banks and Banking, and the fourth

(last) sentence thereof is set out as a note under this section, section 1446 of this title, and section 1715s of Title 12.

1961 Amendment. Pub.L. 87-70 required record keeping provisions in contracts under any other Act, empowered the Comptroller General to examine and audit records and substituted "Housing Act of 1961" for "Housing Act of 1954".

Effective Date. The fourth sentence of section 814 of Act Aug. 2, 1954 provided that this section shall become effective on the first day after the first calendar month following the date of approval of such Act (Aug. 2, 1954).

Legislative History: For legislative history and purpose of Pub.L. 87-70, see 1961 U.S.Code Cong. and Adm.News, p. 1923.

§ 1435. Access to books, documents, etc., for purpose of audit

Every contract for loans or annual contributions under this chapter shall provide that the Public Housing Commissioner and the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination, have access to any books, documents, papers, and records of the public housing agency entering into such contract that are pertinent to its operations with respect to financial assistance under this chapter. Aug. 2, 1954, c. 649, Title VIII, § 816, 68 Stat. 647.

Historical Note

Codification. Section was enacted as a part of the Housing Act of 1954, and not as a part of the United States Housing Act of 1937, which comprises this chapter.

Notes of Decisions

Library references

Records ⇦14.
C.J.S. Records § 35 et seq.

1. State consent

Under State Housing Authority Law, M.G.L.A., c. 121, § 261 et seq., Legislature consented to contract which Boston Housing Authority had made with Public Housing Administration which required the authority to submit to PHA its proposed annual operating budgets for each project, and not to incur any operating expenditures except in accordance with operating budget approved by PHA, and provided in effect that annual contribution should be within a stated maximum. Commissioner of Labor and Industries v. Boston Housing Authority, Mass.1963, 188 N.E.2d 150.

§ 1436. Demonstration programs; grants for development

The Housing and Home Finance Administrator is authorized to enter into contracts to make grants, not exceeding $10,000,000, to public or private bodies or agencies, subject to such terms and conditions as he shall prescribe, for the purposes of developing and demonstrating new or improved means of providing housing for low income persons and families and of demonstrating the types of housing and the means of providing housing that will assist low income persons or families who qualify as handicapped families as defined in sec-

tion 1701q of Title 12. Advances and progress payments may be made, under any contract to make grants under this section, without regard to the provisions of section 529 of Title 31. Pub.L. 87–70, Title II, § 207, June 30, 1961, 75 Stat. 165; Pub.L. 88–560, Title II, § 203(e), Title IV, § 407, Sept. 2, 1964, 78 Stat. 784, 796.

Library references: Health ⇔32; C.J.S. Health § 22 et seq.

Historical Note

Codification. Section was enacted as part of the Housing Act of 1961 and not as a part of the United States Housing Act of 1937, which comprises this chapter.

1964 Amendment. Pub.L. 88–560 increased the maximum amount of grants from $5,000,000 to $10,000,000 and provided for the demonstration of housing and the means of providing housing that will assist low-income persons or handicapped families.

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923.

CHAPTER 8A.—SLUM CLEARANCE, URBAN RENEWAL, AND FARM HOUSING

SUBCHAPTER I.—GENERAL PROVISIONS

SUBCHAPTER II.—SLUM CLEARANCE AND URBAN RENEWAL

Sec.

Sec.

Sec.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 1441. Congressional declaration of national housing policy

The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be: (1) private enterprise shall be encouraged to serve as large a part of the total need as it can; (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need; (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of com-

munities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life; (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural nonfarm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and (5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill. The Housing and Home Finance Agency and its constituent agencies, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established, and in such manner as will encourage and assist (1) the production of housing of sound standards of design, construction, livability, and size for adequate family life; (2) the reduction of the costs of housing without sacrifice of such sound standards; (3) the use of new designs, materials, techniques, and methods in residential construction, the use of standardized dimensions and methods of assembly of home-building materials and equipment, and the increase of efficiency in residential construction and maintenance; (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities; and (5) the stabilization of the housing industry at a high annual volume of residential construction. July 15, 1949, c. 338, § 2, 63 Stat. 413.

Historical Note

References in Text. "This Act", referred to in the text, refers to Act July 15, 1949, c. 338, 63 Stat. 413, which is classified to sections 24, 84, 1701d—1 to 1701f—1, 1701h, 17011, 1703, 1709, and 1738 of Title 12, Banks and Banking, sections 1401, 1402, 1406, 1409–1411, 1413–1416, 1420–1430, and 1433 of this title, and this chapter.

Short Title. Section 1 of Act July 15, 1949 provided that Act July 15, 1949 shall be popularly known as the "Housing Act of 1949". For classification of Act July 15, 1949, see References in Text note above.

Equal Opportunity in Housing. Executive order relating to equal opportunity in housing, see Ex.Ord.No.11063, Nov. 21, 1962, 27 F.R. 11527, set out as a note under section 1982 of this title.

Legislative History: For legislative history and purpose of Act July 15, 1949, see 1949 U.S.Code Cong.Service, p. 1550.

Notes of Decisions

Constitutionality 1
Declaratory judgment 3
Mortgages 2

Library references

Health ⇨32.
C.J.S. Health § 22 et seq.

1. Constitutionality

Section 1441 et seq. of this title providing for redevelopment of blighted areas is not rendered an improper exercise of the power of eminent domain by provisions making the land available for sale or lease to private as well as public agencies, subject to conditions consistent with approved redevelopment plan, since acquisition and clearing of blighted areas completely serves a "public purpose" and subsequent transfer to private parties is incidental thereto. Housing and Redevelopment Authority of City of St. Paul v. Greenman, 1959, 96 N.W.2d 673, 255 Minn. 396.

2. Mortgages

Where contract whereby city redevelopment agency conveyed land expressly provided that in event of failure by either party to comply with its provisions "the other party hereto may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of all damages and costs," in action to foreclose a mortgage on the property to which grantee had title, agency was entitled to seek a determination of its rights in the property as set forth in its counterclaim on theory that mortgage was void as in violation of deed restrictions and this section et seq. and N.J.S.A. 40:55C—1 et seq. Feldman v. Urban Commercial, Inc., 1960, 165 A.2d 854, 64 N.J.Super. 242.

The public policy under section 1441 et seq. of this title and N.J.S.A. 40:55C—1 et seq. applicable to urban redevelopment projects warrants conclusion that restriction in city redevelopment agency's deed that grantee will not "sell, lease, transfer or convey" is not violated merely by a mortgage, but is violated when mortgage is followed by a default which gives mortgagee an absolute right of entry by ejectment, if necessary, and also the right to a foreclosure or sheriff's sale, and transfer of title to the land. Id.

3. Declaratory judgment

In action for declaratory judgment and injunction against execution and putting into effect the urban redevelopment plans, evidence sustained judgment for the defendants as against the claim that the plans fostered enforced racial segregation. Barnes v. City of Gadsden, Ala., C.A.Ala. 1959, 268 F.2d 593, certiorari denied 80 S. Ct. 261, 361 U.S. 915, 4 L.Ed.2d 186.

§ 1442. Repealed. Aug. 31, 1954, c. 1158, § 7, 68 Stat. 1026

Historical Note

Section, Act July 15, 1949, c. 338, Title VI, § 607, 63 Stat. 441, related to housing census, and is covered by section 141 of Title 13, Census.

§ 1443. Provisions as controlling over other laws

Insofar as the provisions of any other law are inconsistent with the provisions of this Act, the provisions of this Act shall be controlling. July 15, 1949, c. 338, Title VI, § 610, 63 Stat. 443.

Historical Note

References in Text. "This Act" referred to in the text, refers to the Housing Act of 1949, Act July 15, 1949. For distribution of that Act in this Code, see note under section 1441 of this title.

§ 1444. Separability of provisions

Except as may be otherwise expressly provided in this Act, all powers and authorities conferred by this Act shall be cumulative

and additional to and not in derogation of any powers and authorities otherwise existing. Notwithstanding any other evidences of the intention of Congress, it is declared to be the controlling intent of Congress that if any provisions of this Act, or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its applications to other persons and circumstances, but shall be confined in its operation to the provisions of this Act or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. July 15, 1949, c. 338, Title VI, § 611, 63 Stat. 443.

Library references: Statutes ⇐64(2); C.J.S. Statutes § 96 et seq.

Historical Note

References in Text. "This Act", referred to in the text, refers to the Housing Act of 1949, Act July 15, 1949. For distribution of that Act in this Code, see note under section 1441 of this title.

§ 1445. Repealed. Aug. 9, 1955, c. 690, § 4(1), 69 Stat. 625

Historical Note

Section, Act July 15, 1949, c. 338, Title VI, § 612, 63 Stat. 444, related to striking or subversive employees of the Housing and Home Finance Agency and the Department of Agriculture, withholding of their wages, and penalties, and is covered by sections 118p–118r of Title 5, Executive Departments and Government Officers and Employees.

§ 1446. Records; contents; examination and audit

Historical Note

Codification. Section, Act Aug. 2, 1954, c. 649, Title VIII, § 814, 68 Stat. 647, as amended, related to the keeping of records, provided for their contents, and authorized examination and audit thereof. The provisions are classified to section 1434 of this title.

SUBCHAPTER II.—SLUM CLEARANCE AND URBAN RENEWAL

Cross References

Cost of inspections and of providing representatives at site of projects being undertaken by local public agencies pursuant to this subchapter, see section 1749d of Title 12, Banks and Banking.

§ 1450. Urban Renewal Fund

The authorizations, funds, and appropriations available pursuant to sections 1452 and 1453 of this title shall constitute a fund, to be known as the "Urban Renewal Fund", and shall be available for advances, loans, and grants to local public agencies for urban renewal

projects in accordance with the provisions of this subchapter, and all contracts, obligations, assets, and liabilities existing under or pursuant to said sections prior to August 2, 1954, are transferred to said Fund. July 15, 1949, c. 338, Title I, § 100, as added Aug. 2, 1954, c. 649, Title III, § 302, 68 Stat. 622, and amended Sept. 23, 1959, Pub.L. 86–372, Title IV, § 417(1), 73 Stat. 676.

Library references: United States ⇐81; C.J.S. United States § 121.

Historical Note

1959 Amendment. Pub.L. 86–372 substituted "advances, loans, and grants" for "advances, loans, and capital grants."

Completion of Projects Entered Into Prior to Aug. 2, 1954. Section 312 of Act Aug. 2, 1954, provided that: "Notwithstanding the amendments of this title to title I of the Housing Act of 1949, as amended [this subchapter], the Administrator, with respect to any project covered by any Federal aid contract executed, or prior approval granted, by him under said title I before the effective date of this Act [Aug. 2, 1954], upon request of the local public agency, shall continue to extend financial assistance for the completion of such project in accordance with the provisions of title I in force immediately prior to the effective date of this Act."

Legislative History: For legislative history and purpose of Pub.L. 86–372, see 1959 U.S.Code Cong. and Adm.News, p. 2844.

§ 1451. Local programs—Local responsibilities considered by Administrator in extending financial assistance

(a) In entering into any contract for advances for surveys, plans, and other preliminary work for projects under this subchapter or for grants pursuant to section 1453(d) of this title, the Administrator shall give consideration to the extent to which appropriate local public bodies have undertaken positive programs (through the adoption, modernization, administration, and enforcement of housing, zoning, building and other local laws, codes and regulations relating to land use and adequate standards of health, sanitation, and safety for buildings, including the use and occupancy of dwellings) for (1) preventing the spread or recurrence in the community of slums and blighted areas, and (2) encouraging housing cost reductions through the use of appropriate new materials, techniques, and methods in land and residential planning, design, and construction, the increase of efficiency in residential construction, and the elimination of restrictive practices which unnecessarily increase housing costs.

Encouragement of operations of local public agencies

(b) In the administration of this subchapter, the Administrator shall encourage the operations of such local public agencies as are established on a State, or regional (within a State), or unified metropolitan basis or as are established on such other basis as permits such agencies to contribute effectively toward the solution of community development or redevelopment problems on a State, or regional (within a State), or unified metropolitan basis. The Administrator shall particularly encourage the utilization of local public agencies established by the States to operate on a statewide basis in behalf of

smaller communities within the State which are undertaking or propose to undertake urban renewal programs whenever that arrangement facilitates the undertaking of an urban renewal program by any such community, or provides an effective solution to community development or redevelopment problems in such communities, and is approved by resolution or ordinance of the governing bodies of the affected communities.

Requirements; exceptions; prohibition against delegation of certain functions; minimum standards housing code

(c) No contract shall be entered into for any loan or capital grant under this subchapter, or for annual contributions or capital grants pursuant to the United States Housing Act of 1937, as amended, for any project or projects not constructed or covered by a contract for annual contributions prior to August 1, 1956, and no mortgage shall be insured, and no commitment to insure a mortgage shall be issued, under section 1715k or section 1715*l*(d) (3) of Title 12, unless (1), there is presented to the Administrator by the locality a workable program for community improvement (which shall include an official plan of action, as it exists from time to time, for effectively dealing with the problem of urban slums and blight within the community and for the establishment and preservation of a well-planned community with well-organized residential neighborhoods of decent homes and suitable living environment for adequate family life) for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation, to provide for the redevelopment of blighted, deteriorated, or slum areas, or to undertake such of the aforesaid activities or other feasible community activities as may be suitably employed to achieve the objectives of such a program, and (2) on the basis of his review of such program, the Administrator determines that such program meets the requirements of this subsection and certifies to the constituent agencies affected that the Federal assistance may be made available in such community: *Provided*, That this sentence shall not apply to the insurance of, or commitment to insure, a mortgage under section 1715k of Title 12, if the mortgaged property is in an area referred to in clause (A) (i) of paragraph (1) of subsection (d) of said section: *And provided further*, That, notwithstanding any other provisions of law which would authorize such delegation or transfer, there shall not be delegated or transferred to any other official (except an officer or employee of the Housing and Home Finance Agency serving as Acting Administrator during the absence or disability of the Administrator or in the event of a vacancy in that office) the final authority vested in the Administrator (i) to determine whether any such workable program meets the requirements of this subsection, (ii) to make the certification that Federal assistance of the types enumerated in this subsection may be made available in such community, or (iii) to determine that the relocation requirements of section 1455(c) of

this title have been met: *Provided further*, That commencing three years after September 2, 1964, no workable program shall be certified or re-certified unless (A) the locality has had in effect, for at least six months prior to such certification or re-certification, a minimum standards housing code, related but not limited to health, sanitation, and occupancy requirements, which is deemed adequate by the Administrator, and (B) the Administrator is satisfied that the locality is carrying out an effective program of enforcement to achieve compliance with such housing code.

Facilities for furnishing urban renewal service and assembly of information

(d) The Administrator is authorized to establish facilities (1) for furnishing to communities, at their request, an urban renewal service to assist them in the preparation of a workable program as referred to in the subsection (c) of this section and to provide them with technical and professional assistance for planning and developing local urban renewal programs (including rehabilitation projects requiring no additional assistance under this subchapter or self-liquidating redevelopment projects), and (2) for the assembly, analysis and reporting of information pertaining to such programs. July 15, 1949, c. 338, Title I, § 101, 63 Stat. 414; Aug. 2, 1954, c. 649, Title III, § 303, 68 Stat. 623; Aug. 11, 1955, c. 783, Title I, § 108(a), 69 Stat. 638; Aug. 7, 1956, c. 1029, Title IV, § 402, 70 Stat. 1103; Sept. 23, 1959, Pub.L. 86–372, Title I, § 110(a) (3), (4), Title IV, §§ 401, 417(2), 73 Stat. 659, 670, 677; June 30, 1961, Pub.L. 87–70, Title I, § 101(b), Title III, § 314(a), 75 Stat. 153, 172; Sept. 2, 1964, Pub.L. 88–560, Title III, §§ 301(a), 302, 78 Stat. 785.

Historical Note

References in Text. The United States Housing Act of 1937, as amended, referred to in subsec. (c), is classified to chapter 8 of this title.

1964 Amendment. Subsec. (c). Pub.L. 88–560, § 301(a), provided that three years after Sept. 2, 1964, no program shall be certified or re-certified, unless the locality has had in effect for at least six months, a minimum standards housing code, and the administrator is satisfied that the locality is enforcing such code.

Subsec. (d). Pub.L. 88–560, § 302, included rehabilitation projects requiring no additional assistance under this subchapter or self-liquidating redevelopment projects.

1961 Amendment. Subsec. (c). Pub.L. 87–70 substituted "under section 1715k or section 1715*l*(d) (3) of Title 12" for "under section 1715k or 1715*l* of Title 12", and "of subsection (d) of said section" for "of subsection (d) of said section, or under section 1715*l* of Title 12, if the mortgaged property is in an area described in clause (3) of subsection (a) of said section, or in a community referred to in clause (2) (B) of said section", inserted words "for community improvement" following "workable program" in cl. (1), and eliminated provisions which prohibited delegation or transfer of the authority vested in the Administrator to make the certifications as to the maximum number of dwelling units needed for the relocation of families to be displaced as a result of governmental action and who would be eligible to rent or purchase dwelling accommodations in properties covered by mortgage insurance under section 1715*l* of Title 12.

1959 Amendment. Subsec. (a). Pub.L. 86–372, § 417(2), inserted "or for grants pursuant to section 1453(d) of this title" following "under this subchapter."

Subsec. (b). Pub.L. 86–372, § 401, required the Administrator to encourage the utilization of local public agencies established by the States to operate on a

statewide basis in behalf of smaller communities which are undertaking or propose to undertake urban renewal programs whenever that arrangement facilitates the undertaking of an urban renewal program by any such community, or provides an effective solution to community development or redevelopment problems in such communities, and is approved by resolution or ordinance of the governing bodies of the affected communities.

Subsec. (c). Pub.L. 86–372, § 110(a) (3), (4), substituted "if the mortgaged property is in an area described in clause (3) of subsection (a) of said section, or in a community referred to in clause (2) (B) of said section" for "if the mortgaged property is in a community referred to in clause (2) of subsection (a) of said section", and eliminated words "in a community" following "as a result of governmental action" in the last proviso.

1956 Amendment. Subsec. (c). Act Aug. 7, 1956 inserted after the first comma "or for annual contributions or capital grants pursuant to the United States Housing Act of 1937, as amended, for any project or projects not constructed or covered by a contract for annual contributions prior to August 1, 1956,".

1955 Amendment. Subsec. (c). Act Aug. 11, 1955 eliminated the requirement that before a contract for annual contributions or capital grants can be entered into the community must have a workable program for the prevention and elimination of slums.

1954 Amendment. Act Aug. 2, 1954 amended section generally to strengthen the requirements with respect to local responsibility and local action, to restrict the delegation of certain final authorities vested in the Administrator, and to establish facilities for (1) an urban renewal service, and (2) the assembly, etc., of information pertaining to programs under this subchapter.

Amendment of Contracts for Incorporation of Certain Cost Provisions. Section 301(d) of Pub.L. 88–560 provided that: "Any contract for a capital grant under title I of the Housing Act of 1949 [this subchapter], executed prior to the date of enactment of this Act [Sept. 2, 1964], may be amended to incorporate the provisions of subsection (c) [of section 1460 of this title] for costs incurred on or after such date."

Legislative History: For legislative history and purpose of Act Aug. 7, 1956, see 1956 U.S.Code Cong. and Adm.News, p. 4509. See, also, Pub.L. 86–372, 1959 U.S.Code Cong. and Adm.News, p. 2844; Pub.L. 87–70, 1961 U.S.Code Cong. and Adm.News, p. 1923.

Cross References

"Workable program" requirements of subsection (c) of this section not applicable to urban renewal in disaster area, see section 1462 of this title.

Notes of Decisions

Library references
Health ⇐32.
C.J.S. Health § 22 et seq.

1. Parties

Lessees of business premises in New York City had no standing to complain of agreements between City and Administrator and Urban Renewal Commissioner of Housing and Home Finance Agency of the United States on ground that such agreements would result in eviction of lessees without compensation, since one who will be injured by another's lawful use of money has no standing to assert that third person's action in providing the money will be illegal. Allied-City Wide, Inc. v. Cole, 1956, 230 F.2d 827, 97 U.S.App.D.C. 277.

§ 1451a. Repealed. Aug. 2, 1954, c. 649, Title III, § 313, 68 Stat. 629

Historical Note

Section, Acts July 31, 1953, c. 302, Title I, § 101, 67 Stat. 305; June 24, 1954, c. 359, Title I, § 101, 68 Stat. 283, which provided that the authority under this subchapter should be used to the utmost in connection with slum rehabilitation needs, is now covered by other sections in this subchapter. See particularly, sections 1451 and 1455 of this title.

§ 1452. Loans—Temporary and definitive loans; amounts; interest rates; security; repayment

(a) To assist local communities in the elimination of slums and blighted or deteriorated or deteriorating areas, in preventing the spread of slums, blight or deterioration, and in providing maximum opportunity for the redevelopment, rehabilitation, and conservation of such areas by private enterprise, the Administrator may make temporary and definitive loans to local public agencies in accordance with the provisions of this subchapter for the undertaking of urban renewal projects. Such loans (outstanding at any one time) shall be in such amounts not exceeding the estimated expenditures to be made by the local public agency for such purposes, bear interest at such rate (not less than the applicable going Federal rate), be secured in such manner, and be repaid within such period (not exceeding, in the case of definitive loans, forty years from the date of the bonds or other obligations evidencing such loans), as may be deemed advisable by the Administrator. In any case where, in connection with its undertaking and carrying out of an urban renewal project, a local public agency is authorized (under the circumstances in which the temporary loan herein provided is requested) to acquire real property in the urban renewal area, the Administrator, in addition to all other authority under this subchapter and notwithstanding any other provisions of this subchapter, regardless of the stage of development of the urban renewal plan and whether before or after the approval thereof, may make a temporary loan or loans to any such local public agency to finance the acquisition of such real property: *Provided*, That no loan for such purpose shall be made unless (1) the governing body of the locality involved shall have approved by resolution or ordinance the acquisition of real property in the urban renewal area, and (2) either (A) the Administrator shall have determined that such loan is reasonably secured by a first mortgage or other prior lien upon such real property or is otherwise reasonably secured, or (B) the governing body of the locality shall have assumed the responsibility to bear any loss that may arise as the result of such acquisition in the event that the property so acquired is not used for urban renewal purposes because the urban renewal plan for the project is not approved, or is amended to omit any of the acquired property, or is abandoned for any reason: *Provided further*, That the Administrator may, in his discretion and subject to such conditions as he may impose, permit any structure so acquired to be demolished and removed, and may include in any loan authorized by this section the cost of such demolition and removal, together with administrative relocation, and other related costs and payments, if the approval of the local governing body extends to such demolition and removal: *And provided further*, That the loan contract shall provide that the local public agency shall not dispose of such real property (except in lieu of foreclosure) until the local gov-

erning body of the locality involved shall have either approved the urban renewal plan for the project or consented to the disposal of such real property. Notwithstanding any other provision of this subchapter, the Administrator may make a temporary loan, as described in the first two sentences of this subsection, for two or more urban renewal projects being carried out by the same local public agency. The principal amount of any such loan which is outstanding at any one time shall not exceed the estimated expenditures to be made by the local public agency for such projects.

Projects on open or predominantly open land

(b) In connection with any project on land which is open or predominantly open, the Administrator may make temporary loans to municipalities or other public bodies for the provision of public buildings or facilities necessary to serve or support the new uses of such land in the project area. Such temporary loans shall be in such amounts not exceeding the expenditures to be made for such purpose, bear interest at such rate (not less than the applicable going Federal rate), be secured in such manner, and be repaid within such period (not exceeding ten years from the date of the obligations evidencing such loans), as may be deemed advisable by the Administrator.

Renegotiation of loans at lower interest rate; pledge of loan contract; payment of principal and interest; construction of contracts and other obligations; incontestability; full faith and credit

(c) Loans made pursuant to subsection (a) or (b) of this section may be made subject to the condition that, if at any time or times or for any period or periods during the life of the loan contract the local public agency can obtain loan funds from sources other than the Federal Government at interest rates lower than provided in the loan contract, it may do so with the consent of the Administrator at such times and for such periods without waiving or surrendering any rights to loan funds under the contract for the remainder of the life of such contract, and, in any such case, the Administrator is authorized to consent to a pledge by the local public agency of the loan contract, and any or all of its rights thereunder, as security for the repayment of the principal of and the interest on the loan funds so obtained from other sources. In connection with any such pledge of a loan contract, including loan payments thereunder, as security for the repayment of obligations of the local public agency held by other than the Federal Government, the Administrator is authorized to agree to pay, through operations of a paying agent or agents, and to pay or cause to be paid when due, from funds obtained pursuant to subsection (e) of this section, to the holders of such obligations (or to their agents or designees) the principal of and the interest on such obligations, subject to such conditions as the Administrator may determine but without regard to any other condition or requirement. Notwithstanding any other provision of law, any contract or

other instrument executed by the Administrator which, by its terms, includes an obligation of the Administrator to make payment pursuant to this subsection shall be construed by all officers of the United States separate and apart from the loan contract and shall be incontestable in the hands of a bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Administrator pursuant to this subsection.

Advances for surveys and plans; repayment; interest rate; application; General Neighborhood Renewal Plans

(d) The Administrator may make advances of funds to local public agencies for surveys of urban areas to determine whether the undertaking of urban renewal projects therein may be feasible and for surveys and plans for urban renewal projects which may be assisted under this subchapter, including, but not limited to, (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, (ii) plans for the enforcement of State and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (iii) appraisals, title searches, and other preliminary work necessary to prepare for the acquisition of land in connection with the undertaking of such projects. The contract for any such advance of funds shall be made upon the condition that such advance of funds shall be repaid, with interest at not less than the applicable going Federal rate, out of any moneys which become available to the local public agency for the undertaking of the project involved. No contract for any such advances of funds for surveys and plans for urban renewal projects which may be assisted under this subchapter shall be made unless the governing body of the locality involved has by resolution or ordinance approved the undertaking of such surveys and plans and the submission by the local public agency of an application for such advance of funds. Notwithstanding section 1460(h) of this title or the use in any other provision of this subchapter of the term "local public agency" or "local public agencies" the Administrator may make advances of funds under this subsection for surveys and plans for an urban renewal project (including General Neighborhood Renewal Plans as hereinafter defined) to a single local public body which has the authority to undertake and carry out a substantial portion, as determined by the Administrator, of the surveys and plans or the project respecting which such surveys and plans are to be made: *Provided*, That the application for such advances shows, to the satisfaction of the Administrator, that the filing thereof has been approved by the public body or bodies authorized to undertake the other portions of the surveys and plans or of the project which the applicant is not authorized to undertake.

In order to facilitate proper preliminary planning for the attainment of the urban renewal objectives of this subchapter, the Administrator may also make advances of funds (in addition to those

authorized above) to local public agencies for the preparation of General Neighborhood Renewal Plans (as herein defined) for urban renewal areas of such scope that the urban renewal activities therein may have to be carried out in stages, consistent with the capacity and resources of the respective local public agency, over an estimated period of not more than ten years. No contract for advances for the preparation of a General Neighborhood Renewal Plan may be made unless the Administrator has determined that:

(1) in the interest of sound community planning, it is desirable that the urban renewal area be planned for urban renewal purposes in its entirety;

(2) the local public agency proposes to undertake promptly an urban renewal project embracing at least 10 per centum of such area, upon completion of the General Neighborhood Renewal Plan and the preparation of an urban renewal plan for such project; and

(3) the governing body of the locality has by resolution or ordinance (i) approved the undertaking of the General Neighborhood Renewal Plan and the submission of an application for such advance and (ii) represented that such plan will be used to the fullest extent feasible as a guide for the provision of public improvements in such area and that the plan will be considered in formulating codes and other regulatory measures affecting property in the area and in undertaking other local governmental activities pertaining to the development, redevelopment, rehabilitation, and conservation of the area.

The contract for any such advance of funds for a General Neighborhood Renewal Plan shall be made upon the condition that such advance shall be repaid, with interest at not less than the applicable going Federal rate, out of any moneys which become available to the local public agency for the undertaking of the first urban renewal project in such area: *Provided*, That in the event of the undertaking of any other project or projects in such area an appropriate allocation of the amount of the advance, with interest, may be effected to the end that each such project may bear its proper allocable part, as determined by the Administrator, of the cost of the General Neighborhood Renewal Plan. As used herein, a General Neighborhood Renewal Plan means a preliminary plan (conforming, in the determination of the governing body of the locality, to the general plan of the locality as a whole and to the workable program of the community meeting the requirements of section 1451 of this title) which outlines the urban renewal activities proposed for the area involved, provides a framework for the preparation of urban renewal plans and indicates generally, to the extent feasible in preliminary planning, the land uses, population density, building coverage, prospective requirements for rehabilitation and improvement of property, and any portions of the area contemplated for clearance and redevelopment.

Amount of funds outstanding for loans

(e) The total amount of loan contracts outstanding at any one time under this subchapter shall not exceed the aggregate of the estimated expenditures to be made by local public agencies as part of the gross project cost of the projects assisted by such contracts. To obtain funds for advance and loan disbursements under this subchapter, the Administrator may issue and have outstanding at any one time notes and obligations for purchase by the Secretary of the Treasury in an amount which shall not, unless authorized by the President exceed $1,000,000,000. For the purpose of establishing unpaid obligations as of a given date against the authorization contained in the preceding sentence, the Administrator shall estimate the maximum amount to be required to be borrowed from the Treasury and outstanding at any one time with respect to loan commitments in effect on such date.

Notes and obligations; form and denomination; maturity date; interest rate; purchase and sale by Treasury; public debt transaction

(f) Notes or other obligations issued by the Administrator under this subchapter shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as may be prescribed by the Administrator, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Administrator issued under this subchapter and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

Tax exemption

(g) Obligations, including interest thereon, issued by local public agencies for projects assisted pursuant to this subchapter, and income derived by such agencies from such projects, shall be exempt from all taxation now or hereafter imposed by the United States. July 15, 1949, c. 338, Title I, § 102, 63 Stat. 414; Aug. 2, 1954, c. 649, Title III, § 304, 68 Stat. 624; Aug. 7, 1956, c. 1029, Title III, §§ 301, 303, 70 Stat. 1097, 1099; Sept. 23, 1959, Pub.L. 86–372, Title IV, §§

402–404, 73 Stat. 671; June 30, 1961, Pub.L. 87–70, Title III, §§ 302 (a), 314(b), 75 Stat. 166, 172; Sept. 2, 1964, Pub.L. 88–560, Title III, § 303(a), 78 Stat. 785.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

References in Text. The Second Liberty Bond Act, as amended, referred to in subsec. (f), is classified to sections 745, 752–754b, 757, 757b–758, 760, 764–766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

Such Act, as amended, referred to in subsec. (f), refers to the Second Liberty Bond Act.

1964 Amendment. Subsec. (a). Pub.L. 88–560 authorized the Administrator to make temporary loans for two or more urban renewal projects being carried out by the same local public agency, not exceeding at any one time, the estimated expenditures to be made by the local public agency for such projects.

1961 Amendment. Subsec. (a). Pub.L. 87–70, § 314(b), inserted ", together with administrative, relocation, and other related costs and payments," following "the cost of such demolition and removal."

Subsec. (c). Pub.L. 87–70, § 302(a) authorized the Administrator, in connection with any pledge of a loan contract, including loan payments thereunder, as security for the repayment of obligations of the local public agency held by other than the Federal Government, to agree to pay, through operations of a paying agent or agents, and to pay or cause to be paid when due, to the holders of such obligations (or to their agents or designees) the principal and interest on such obligations, and inserted provisions requiring contracts or other instruments which include an obligation of the Administrator to make payment pursuant to this subsection to be construed separate and apart from the loan contract, which state that they are incontestable and which pledge the full faith and credit of the United States to the payment.

1959 Amendment. Subsec. (a). Pub.L. 86–372, §§ 402(a), 403, substituted "for such purposes" for "as part of the gross project cost" in the second sentence, and inserted provisions authorizing the Administrator to make a temporary loan or loans to a local public agency to finance the acquisition of real property regardless of the stage of development of the urban renewal plan and whether before or after the approval thereof.

Subsec. (c). Pub.L. 86–372, § 402(b), substituted "repayment of the principal of and the interest on the loan funds" for "repayment of the loan funds."

Subsec. (e). Pub.L. 86–372, § 404, amended subsec. (e) generally, and among other changes, inserted provisions limiting the total amount of loan contracts outstanding at any one time under this subchapter to not more than the aggregate of the estimated expenditures to be made by local public agencies as part of the gross project cost of the projects assisted by such contracts, and requiring the Administrator, for the purpose of establishing unpaid obligations as of a given date against the authorization, to estimate the maximum amount to be required to be borrowed from the Treasury and outstanding at any one time with respect to loan commitments in effect on such date, and eliminated provisions which authorized the limitation (subject to the total authorization of $1,000,000,000) to be increased by additional amounts aggregating not more than $250,000,000 upon a determination by the President, after receiving advice from the Council of Economic Advisers as to the general effect of such increase upon the conditions in the building industry and upon the national economy, that such action is in the public interest.

1956 Amendment. Subsec. (d). Act Aug. 7, 1956 added provisions to permit Administrator to advance funds for surveys to agency authorized to carry out substantial portion of project respecting which surveys and plans are to be made, provided application for advances shows filing has been approved by public bodies authorized to undertake other portions of project which applicant is not authorized to undertake; inserted "surveys of urban areas to determine whether the undertaking of urban renewal projects therein may be feasible and for" following "The Administrator may make advances of funds to local public agencies for"; and added provisions at the end relating to General Neighborhood Renewal Plans.

1954 Amendment. Subsec. (a). Act Aug. 2, 1954, § 304(1), (2), redefined in the first sentence the areas to be elim-

inated, and "projects" (referred to as urban renewal projects); and, substituted in the second sentence "estimated expenditures" for "expenditures", and substituted "bonds or other obligations" for "bonds".

Subsec. (b). Act Aug. 2, 1954, § 304(3), (4), inserted near end of first sentence "such" before "land", and, substituted in second sentence "at" for "as", before "such rate".

Subsec. (d). Act Aug. 2, 1954, § 304(5), amended subsec. (d) generally to include among the advances of funds (1) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, (2) plans for enforcement of State and local laws, codes and regulations relating to the use and occupancy of buildings and improvements, and to the compulsory repair, demolition or removal of buildings and improvements, and (3) appraisals, title searches and other preliminary work necessary to prepare for the acquisition of land in connection with the undertaking of the projects referred to; and to provide that no such advance could be made in connection with any urban renewal project unless the governing body of the locality involved has approved (by resolution or ordinance) the undertaking of the surveys and plans and the submission by the local public agency of an application for the advance of funds.

Delegation of Functions. For delegation of functions, vested in the President by subsection (e) of this section, to the Housing and Home Finance Administrator, see section 4(a) of Ex.Ord.No. 10530, May 11, 1954, 19 F.R. 2709, set out as a note under section 301 of Title 3, The President.

Legislative History: For legislative history and purpose of Pub.L. 86-372, see 1959 U.S.Code Cong. and Adm.News, p. 2844. See, also, Pub.L. 87-70, 1961 U.S. Code Cong. and Adm.News, p. 1923.

Cross References

Blighted or deteriorated area requirement for urban renewal not applicable to disaster area, see section 1462 of this title.

§ 1452a. Grants for preventing and eliminating slums and urban blight; preferences; reports, summaries, and informational material; aggregate amount; advance or progress payments

(a) The Housing and Home Finance Administrator is authorized to make grants, subject to such terms and conditions as he shall prescribe, to public bodies, including cities and other political subdivisions, to assist them in developing, testing, and reporting methods and techniques, and carrying out demonstrations and other activities for the prevention and the elimination of slums and urban blight. No such grant shall exceed two-thirds of the cost, as determined or estimated by said Administrator, of such activities or undertakings, but such grant may in addition cover the full cost of writing and publishing the reports on such activities and undertakings. In administering this section, said Administrator shall give preference to those activities and undertakings which in his judgment can reasonably be expected to (1) contribute most significantly to the improvement of methods and techniques for the elimination and prevention of slums and blight, and (2) best serve to guide renewal programs in other communities.

(b) The Administrator is further authorized to pay for the cost of (1) writing and publishing reports on activities and undertakings financed by grants made under this section, as well as reports on

similar activities and undertakings, not so financed, which are of significant value in furthering the purposes of this section, and (2) writing and publishing summaries and other informational material on such reports.

(c) The aggregate amount of grants made under subsection (a) of this section, and other costs incurred pursuant to subsection (b) of this section, shall not exceed $10,000,000 and shall be payable from the grant funds provided under and authorized by section 1453(b) of this title. The Administrator may make advance or progress payments on account of any contract entered into pursuant to this section, notwithstanding the provisions of section 529 of Title 31. Aug. 2, 1954, c. 649, Title III, § 314, 68 Stat. 629; Sept. 2, 1964, Pub.L. 88–560, Title III, § 313, 78 Stat. 792.

Historical Note

Codification. Section was enacted as a part of the Housing Act of 1954, and not as a part of the Housing Act of 1949, part of which comprises this chapter.

1964 Amendment. Pub.L. 88–560 provided that a grant may cover the full cost of writing and publishing reports on activities and undertakings, authorized the Administrator to pay costs of reports on activities financed under this section as well as on similar activities, not so financed, of significant value in furthering the purposes of this section, and summaries and other informational material on such reports, and increased the aggregate amount of grants made under the section from $5,000,000 to $10,000,000.

§ 1452b. Rehabilitation loans—Considerations

(a) To assist rehabilitation in an urban renewal area and thereby reduce the need for demolition and removal of structures, the Housing and Home Finance Administrator is hereby authorized, through the utilization of local public and private agencies where feasible, to make loans as herein provided to the owners or tenants of property in such area to finance rehabilitation required to make the property conform to applicable code requirements or to carry out the objectives of the urban renewal plan for the area. No loan shall be made under this section unless the Administrator finds (1) that the applicant is unable to secure the necessary funds from other sources upon reasonable terms and conditions, and (2) the loan is an acceptable risk taking into consideration the need for the rehabilitation, the security available for the loan, and the ability of the applicant to repay the loan.

Definitions

(b) For the purposes of this section—

(1) the term "rehabilitation" means the improvement or repair of a structure or facilities in connection with a structure, and may include the provision of such sanitary or other facilities as are required by applicable codes or the urban renewal plan to be provided by the owner or tenant of the property;

(2) the term "urban renewal area" means a slum area or a blighted, deteriorated, or deteriorating area as defined in section 1460(a) of this title;

(3) the term "tenant" means a person or organization who is occupying a structure under a lease having a period to run at the time a rehabilitation loan is made under this section of not less than the term of the loan; and

(4) the term "Administrator" means the Housing and Home Finance Administrator.

Limitations

(c) A rehabilitation loan made under this section shall be subject to the following limitations:

(1) The loan shall be subject to such terms and conditions as may be prescribed by the Administrator.

(2) The term of the loan may not exceed twenty years or three-fourths of the remaining economic life of the structure after rehabilitation, whichever is less.

(3) The loan shall bear interest at such rate as the Administrator determines to be appropriate but not to exceed 3 per centum per annum of the amount of the principal outstanding at any time, and the Administrator may prescribe such other charges as he finds necessary, including service charges and appraisal, inspection, and other fees.

(4) The amount of the loan may not exceed—

(A) in the case of residential property, the amount of a loan which could be insured by the Federal Housing Commissioner under section 1715k (b) of Title 12: *Provided,* That, within the limitations otherwise applicable on the amount of a loan under such section, the loan may exceed the cost of rehabilitation in order to include an amount approved by the Administrator to refinance existing indebtedness secured by such property if such refinancing is necessary to enable the applicant to amortize, with a monthly payment of not more than 20 per centum of his average monthly income, such loan and any other indebtedness secured by his property; and

(B) in the case of nonresidential property, whichever of the following is the least: $50,000, or the cost of rehabilitation, or an amount which when added to any outstanding indebtedness related to the property securing the loan creates a total outstanding indebtedness that the Administrator determines could be reasonably secured by a first mortgage on the property.

(5) A loan shall be secured as determined by the Administrator.

Authorization of appropriations; revolving fund

(d) There is authorized to be appropriated not to exceed $50,000,000 which shall constitute a revolving fund to be used by the Administrator in carrying out this section.

Additional functions, powers and duties of Administrator

(e) In the performance of, and with respect to, the functions, powers, and duties vested in him by this section, the Administrator shall have (in addition to any authority otherwise vested in him) the functions, powers, and duties set forth in section 1749a of Title 12 (except subsection (c) (2)).

Use of Federal or local public or private agency or organization as agent of Administrator

(f) The Administrator is authorized to delegate to or use as his agent any Federal or local public or private agency or organization to the extent he determines appropriate and desirable to carry out the objectives of this section in the area involved.

Rules and regulations; requirements and conditions

(g) The Administrator is authorized to issue such rules and regulations and impose such requirements and conditions (in addition to those specified in this section) as he determines to be desirable to carry out the objectives of this section, including limitations on the amount of a loan and restrictions on the use of the property involved. Pub.L. 88–560, Title III, § 312, Sept. 2, 1964, 78 Stat. 790.

§ 1453. Grants for urban renewal projects—Authorization; aggregate amount; limitation on grants for individual projects

(a) (1) The Administrator may make capital grants to local public agencies in accordance with the provisions of this subchapter for urban renewal projects: *Provided*, That the Administrator shall not make any contract for capital grant with respect to a project which consists of open land.

(2) The aggregate of such capital grants with respect to all of the projects of a local public agency (or of two or more local public agencies in the same municipality) on which contracts for capital grants have been made under this subchapter shall not exceed the total of—

(A) two-thirds of the aggregate net project costs of all such projects to which neither subparagraph (B) nor subparagraph (C) applies, and

(B) three-fourths of the aggregate net project costs of any of such projects which are located in a municipality having a population of fifty thousand or less (one hundred fifty thousand

or less in the case of a municipality situated in an area which, at the time the contract or contracts involved are entered into or at such earlier time as the Administrator may specify in order to avoid hardship, is designated as a redevelopment area under the second sentence of section 2504(a) of this title) according to the most recent decennial census, and

(C) three-fourths of the aggregate net project costs of any of such projects (not falling within subparagraph (B)) which the Administrator, upon request, may approve on a three-fourths capital grant basis.

(3) A capital grant with respect to any individual project shall not exceed the difference between the net project cost and the local grants-in-aid actually made with respect to the project.

Limitation on aggregate amount of grants; authorization of appropriations; repayment of certain uncollectible loans

(b) The Administrator may, with the approval of the President, contract to make grants under this subchapter aggregating not to exceed $4,725,000,000: *Provided*, That of such sum the Administrator may, without regard to other provisions of this subchapter, contract to make grants aggregating not to exceed $25,000,000 for mass transportation demonstration projects which he determines will assist in carrying out urban transportation plans and research, including but not limited to the development of data and information of general applicability on the reduction of urban transportation needs, the improvement of mass transportation service, and the contribution of such service toward meeting total urban transportation needs at minimum cost. Such grants shall not be used for major long-term capital improvement; shall not exceed two-thirds of the cost, as determined or estimated by the Administrator, of the project for which the grant is made; and shall be subject to such other terms and conditions as he may prescribe. The Administrator is authorized, notwithstanding the provisions of section 529 of Title 31, to make advance or progress payments on account of any grant contracted to be made pursuant to this section. The faith of the United States is solemnly pledged to the payment of all grants contracted for under this subchapter, and there are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such payments: *Provided*, That any amounts so appropriated shall also be available for repaying to the Secretary of the Treasury, for application to notes of the Administrator, the principal amounts of any funds advanced to local public agencies under this subchapter which the Administrator determines to be uncollectible because of the termination of activities for which such advances were made, together with the interest paid or accrued to the Secretary (as determined by him) attributable to notes given by the Administrator in connection with such advances, but all such repayments shall constitute a charge against the authorization to

make contracts for grants contained in this section: *Provided further*, That no such determination of the Administrator shall be construed to prejudice the rights of the United States with respect to any such advance.

Restriction on financial assistance to localities or local public agencies

(c) Notwithstanding any other provision of this or any other Act, if financial assistance authorized by this subchapter to be made available to a locality or local public agency may be made available to any locality or local public agency within the limitations provided in subsection (b) of this section and sections 1452(e) and 1456(e) of this title, and the second paragraph following the paragraph numbered (6) of section 1460(c) of this title, the amount of such financial assistance made available to any locality or local public agency upon submission and processing of proper application therefor shall not otherwise be restricted except on the basis of (1) urgency of need, and (2) feasibility, as determined by the Administrator.

Grants for preparation or completion of community renewal programs; requirements; approval by governing body; submission of application; limitation on amount of grants

(d) The Administrator may contract to make grants for the preparation or completion of community renewal programs, which may include, without being limited to, (1) the identification of slum areas or blighted, deteriorated, or deteriorating areas in the community, (2) the measurement of the nature and degree of blight and blighting factors within such areas, (3) determination of the financial, relocation, and other resources needed and available to renew such areas, (4) the identification of potential project areas and, where feasible, types of urban renewal action contemplated within such areas, and (5) scheduling or programing of urban renewal activities. Such programs shall conform, in the determination of the governing body of the locality, to the general plan of the locality as a whole. The Administrator may establish reasonable requirements respecting the scope and content of such programs. No contract for a grant pursuant to this subsection shall be made unless the governing body of the locality involved has approved the preparation or completion of the community renewal program and the submission by the local public agency of an application for such a grant. Notwithstanding section 1460(h) of this title or the use in any other provision of this subchapter of the term "local public agency" or "local public agencies", the Administrator may make grants pursuant to this subsection for the preparation or completion of a community renewal program to a single local public body authorized to perform the planning work necessary to such preparation or completion. No grant made pursuant to this subsection shall exceed two-thirds of the cost (as such cost is determined or estimated by the Administrator) of the preparation or completion of the community renewal program

for which such grant is made. July 15, 1949, c. 338, Title I, § 103, 63 Stat. 416; Aug. 2, 1954, c. 649, Title III, § 305, 68 Stat. 625; Aug. 11, 1955, c. 783, Title I, § 106(a), 69 Stat. 637; July 12, 1957, Pub. L. 85–104, Title III, §§ 301, 302(1), 71 Stat. 299; Sept. 23, 1959, Pub. L. 86–372, Title IV, §§ 405, 417(1), 73 Stat. 672, 676; June 30, 1961, Pub.L. 87–70, Title III, §§ 301(a), 303, 75 Stat. 165, 166; Sept. 2, 1964, Pub.L. 88–560, Title III, § 304, 78 Stat. 785.

Historical Note

References in Text. "This Act", referred to in subsec. (c), refers to the Housing Act of 1949, Act July 15, 1949. For distribution of that Act in this Code, see note under section 1441 of this title.

1964 Amendment. Subsec. (b). Pub.L. 88–560 substituted "$4,725,000,000" for "$4,000,000,000."

1961 Amendment. Subsec. (a). Pub.L. 87–70, § 301(a), designated existing provisions as par. (1), eliminated therein provisions which limited the aggregate of capital grants with respect to all the projects of a local public agency on which contracts for capital grants have been made under this subchapter to not more than two-thirds of the aggregate of the net project costs of nonexcluded projects, which permitted the aggregate of the capital grants to exceed two-thirds but not three-fourths of the aggregate net project costs of those projects which the Administrator might approve on such a three-fourths capital grant basis, and which provided that a capital grant with respect to any individual project shall not exceed the difference between the net project cost and the local grants-in-aid actually made with respect to the project, and added pars. (2) and (3).

Subsec. (b). Pub.L. 87–70, § 303, increased the contract authorization from $2,000,000,000 to $4,000,000,000, empowered the Administrator to contract to make grants aggregating not more than $25,000,000 for mass transportation demonstration projects, prohibited the use of such grants for major long-term capital improvements, limited the grants to not more than two-thirds of the cost of the project, and permitted the Administrator to make advance or progress payments.

1959 Amendment. Subsec. (b). Pub.L. 86–372, §§ 405(1), (2), 417(1), increased the grant authorization by $350,000,000 on Sept. 23, 1959, and by $300,000,000 on July 1, 1960, and provided that the appropriated funds shall also be available for repaying to the Secretary of the Treasury, for application to notes of the Administrator, the principal amounts of any funds advanced to local public agencies under this subchapter which the Administrator determines to be uncollectible because of the termination of activities for which such advances were made, together with the interest paid or accrued to the Secretary attributable to notes given by the Administrator in connection with such advances.

Subsecs. (c), (d) added by Pub.L. 86–372, § 405(3), added subsecs. (c) and (d).

1957 Amendment. Subsec. (a). Pub.L. 85–104, § 302(1), provided that capital grants may exceed two-thirds but not three-fourths of the aggregate net costs of projects which the Administrator, at the request of local public agency, approves on such basis.

Subsec. (b). Pub.L. 85–104, § 301, substituted "$900,000,000, which limit shall be increased by $350,000,000 on July 12, 1957" for "$500,000,000, which limit shall be increased by further amounts of $200,000,000 on July 1 in each of the years 1955 and 1956, respectively".

1955 Amendment. Subsec. (b). Act Aug. 11, 1955 authorized $200,000,000 on July 1, 1955 and July 1, 1956 for capital grants for slum clearance and urban renewal.

1954 Amendment. Subsec. (a). Act Aug. 2, 1954, in the matter preceding the proviso, substituted "in accordance with the provisions of this subchapter for urban renewal projects" for "to enable such agencies to make land in project areas available for redevelopment at its fair value for the uses specified in the redevelopment plans".

Delegation of Functions. For delegation of functions, vested in the President by subsection (b) of this section, to the Housing and Home Finance Administrator, see section 4(b) of Ex.Ord.No.10530, May 11, 1954, 19 F.R. 2709, set out as a note under section 301 of Title 3, The President.

Legislative History: For legislative history and purpose of Pub.L. 85–104, see 1957 U.S.Code Cong. and Adm.News, p. 1319. See, also, Pub.L. 86–372, 1959 U.S.Code Cong. and Adm.News, p. 2844; Pub.L. 87–70, 1961 U.S.Code Cong. and Adm.News, p. 1923.

Notes of Decisions

1. Construction

Under provision of McKinney's N.Y. General Municipal Law permitting acquisition of real property by municipality for slum clearance and rehabilitation, redevelopment is not restricted to a particular type of improvement, and thus a taxpayer is not entitled to enjoin expenditure of city funds on ground that redevelopment is not predominantly for residential purposes, even if this subchapter be deemed to require that Federal funds be expended for redevelopment for predominantly residential uses. Kaskel v. Impellitteri, 1953, 121 N.Y.S.2d 848, 204 Misc. 346, affirmed 120 N.Y.S.2d 758, 281 App.Div. 962, affirmed 115 N.E.2d 653, 306 N.Y. 73, reargument denied 115 N.E. 2d 832, 306 N.Y. 609, certiorari denied 74 S.Ct. 629, 347 U.S. 934, 98 L.Ed. 1084.

§ 1454. Requirements for local grants-in-aid

Every contract for capital grants under this subchapter shall require local grants-in-aid in connection with the project involved. Such local grants-in-aid, together with the local grants-in-aid to be provided in connection with all other projects of the local public agency (or two or more local public agencies in the same municipality) on which contracts for capital grants have theretofore been made, shall be at least equal to the total of one-third of the aggregate net project costs of such projects undertaken on a two-thirds capital grant basis and one-fourth of the aggregate net project costs of such projects undertaken on a three-fourths capital grant basis. July 15, 1949, c. 338, Title I, § 104, 63 Stat. 416; Aug. 2, 1954, c. 649, Title III, § 306, 68 Stat. 625; Aug. 7, 1956, c. 1029, Title III, § 306, 70 Stat. 1101; July 12, 1957, Pub.L. 85–104, Title III, § 302(2), 71 Stat. 300; June 30, 1961, Pub.L. 87–70, Title III, § 301(b), 75 Stat. 166.

Library references: States ⇐127; C.J.S. States § 158.

Historical Note

1961 Amendment. Pub.L. 87–70 inserted the parenthetical phrase "(or two or more local public agencies in the same municipality)" and substituted "shall be at least equal to the total of one-third of the aggregate net project costs of such projects undertaken on a two-thirds capital grant basis and one-fourth of the aggregate net project cost of such projects undertaken on a three-fourths capital grant basis" for "shall not be required in excess of one-third of the aggregate net project costs of all projects of the local public agency on which contracts for capital grants have been made on the two-thirds basis, or in excess of one-fourth of the aggregate net project costs of all projects of the local public agency on which contracts for capital grants have been made on the three-fourths basis."

1957 Amendment. Pub.L. 85–104 inserted "on the two-thirds basis, or in excess of one-fourth of the aggregate net project costs of all projects of the local public agency on which contracts for capital grants have been made on the three-fourths basis".

1956 Amendment. Act Aug. 7, 1956 amended section generally and restated provisions that local governments are not required to pay in excess of one-third of net project costs.

1954 Amendment. Act Aug. 2, 1954 substituted "of the property" for "of land" before "in such projects" at end of section.

Legislative History: For legislative history and purpose of Pub.L. 85–104, see 1957 U.S.Code Cong. and Adm.News, p. 1319. See, also, Pub.L. 87–70, 1961 U.S. Code Cong. and Adm.News, p. 1923.

§ 1455. Requirements for loan- or capital-grant contracts

Contracts for loans or capital grants shall be made only with a duly authorized local public agency and shall require that—

Approval of urban renewal plan

(a) The urban renewal plan for the urban renewal area be approved by the governing body of the locality in which the project is situated, and that such approval include findings by the governing body that (i) the financial aid to be provided in the contract is necessary to enable the project to be undertaken in accordance with the urban renewal plan; (ii) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the locality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; (iii) the urban renewal plan conforms to a general plan for the development of the locality as a whole; and (iv) the urban renewal plan gives due consideration to the provision of adequate park and recreational areas and facilities, as may be desirable for neighborhood improvement, with special consideration for the health, safety, and welfare of children residing in the general vicinity of the site covered by the plan;

Obligations of purchasers, lessees, assignees of property, and Federal agencies

(b) When real property acquired or held by the local public agency in connection with the project is sold or leased, the purchasers or lessees and their assignees shall be obligated (i) to devote such property to the uses specified in the urban renewal plan for the project area; (ii) to begin within a reasonable time any improvements on such property required by the urban renewal plan; and (iii) to comply with such other conditions as the Administrator finds, prior to the execution of the contract for loan or capital grant pursuant to this subchapter, are necessary to carry out the purposes of this subchapter: *Provided*, That clause (ii) of this subsection shall not apply to mortgagees and others who acquire an interest in such property as the result of the enforcement of any lien or claim thereon: *And provided further*, That, with respect to any improvements of a type which it is otherwise authorized to undertake, any Federal agency (as defined in section 472(b) of Title 40, and also including the District of Columbia or any agency thereof) is authorized to become obligated in accordance with this subsection, except that clause (ii) of this subsection shall apply to such Federal agency only to the extent that it is authorized (and funds have been made available) to make the improvements involved;

Temporary relocation of individuals and families displaced from urban renewal area; relocation assistance program

(c) There be a feasible method for the temporary relocation of individuals and families displaced from the urban renewal area, and that there are or are being provided, in the urban renewal area or in

other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the individuals and families displaced from the urban renewal area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced individuals and families and reasonably accessible to their places of employment: *Provided*, That the Administrator shall issue rules and regulations to aid in implementing the requirements of this subsection and in otherwise achieving the objectives of this subchapter which shall require that there be established, at the earliest practicable time, for each urban renewal project involving the displacement of families, individuals, or business concerns occupying property in an urban renewal area, a relocation assistance program which shall include such measures, facilities, and services as may be necessary or appropriate in order (1) to determine the needs of such families, individuals, and business concerns for relocation assistance, (2) to provide information and assistance to aid in relocation and otherwise minimize the hardships of displacement, and (3) to assure the necessary coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community which may affect the carrying out of the relocation program.

Acquisition of land; public hearings

(d) No land for any project to be assisted under this subchapter shall be acquired by the local public agency except after public hearing following notice of the date, time, place, and purpose of such hearing.

Public disclosure by redevelopers

(e) No understanding with respect to, or contract for, the disposition of land within an urban renewal area shall be entered into by a local public agency unless the local public agency shall have first made public, in such form and manner as may be prescribed by the Administrator, (1) the name of the redeveloper, together with the names of its officers and principal members, shareholders and investors, and other interested parties, (2) the redeveloper's estimate of the cost of any residential redevelopment and rehabilitation, and (3) the redeveloper's estimate of rentals and sales prices of any proposed housing involved in such redevelopment and rehabilitation: *Provided*, That nothing in this subsection shall constitute a basis for contesting the conveyance of, or title to, such land. July 15, 1949, c. 338, Title I, § 105, 63 Stat. 416; Aug. 2, 1954, c. 649, Title III, § 307, 68 Stat. 625; Aug. 7, 1956, c. 1029, Title III, § 302(a) (1), 70 Stat. 1097; Sept. 23, 1959, Pub.L. 86–372, Title IV, §§ 406, 407, 73 Stat. 673; June 30, 1961, Pub.L. 87–70, Title III, § 315, 75 Stat. 172; Sept. 2, 1964, Pub.L. 88–560, Title III, § 305(a) (1), (b), 78 Stat. 786.

Historical Note

1964 Amendment. Subsec. (c). Pub.L. 88-560, § 305(a) (1), (b), substituted "individuals and families" for "families" wherever appearing, and provided that the Administrator shall require a relocation assistance program for each urban renewal project involving displacement of families, individuals and business concerns, to determine needs for assistance, provide information to minimize hardships, and to assure coordination of relocation activities with other project activities and governmental actions which may affect the relocation program.

1961 Amendment. Subsec. (a). Pub.L. 87-70 added cl. (iv).

1959 Amendment. Subsec. (b). Pub.L. 86-372, § 406, inserted proviso authorizing Federal agencies, with respect to any improvements of a type which they are otherwise authorized to undertake, to become obligated in accordance with this subsection.

Subsec. (e). Pub.L. 86-372, § 407, added subsec. (e).

1956 Amendment. Subsec. (a). Act Aug. 7, 1956, eliminated "(including any redevelopment plan constituting a part thereof)" following "The urban renewal plan".

1954 Amendment. Act Aug. 2, 1954, § 307(1), substituted in the opening clause "Contracts for loans or capital grants" for "Contracts for financial aid".

Subsecs. (a), (b). Act Aug. 2, 1954, § 307(2), amended the subsecs. principally to substitute references to "urban renewal plan" for "redevelopment plan" in certain places, thus embracing the additional rehabilitation and conservation activities authorized by this subchapter as amended by Act Aug. 2, 1954.

Subsec. (c). Act Aug. 2, 1954, § 307(3), (4), substituted "urban renewal" for "project" wherever appearing, and struck out the proviso which restricted the demolition of residential structures with respect to contracts entered into prior to July 1, 1951, "in view of the existing acute housing shortage".

Relocation of Displaced Individuals. Section 305(a) (2) of Pub.L. 88-560 provided that: "The requirement imposed by the amendments made by paragraph (1) [which substituted "individuals and families" for "families" whenever appearing in subsec. (c)] shall not be applicable to any project receiving Federal recognition prior to the date of the enactment of this Act [Sept. 2, 1964]."

Legislative History: For legislative history and purpose of Pub.L. 86-372, see 1959 U.S.Code Cong. and Adm.News, p. 2844. See, also, Pub.L. 87-70, 1961 U.S. Code Cong. and Adm.News, p. 1923.

Cross References

"Public hearing" requirements of subsection (d) of this section as not applicable to disaster areas, see section 1462 of this title.

"Relocation" requirements of subsection (c) of this section not applicable to disaster areas, see section 1462 of this title.

Urban renewal plan, requirement of conformance to a general plan of the locality not applicable to disaster areas, see section 1462 of this title.

Notes of Decisions

Library references

United States ⇐82.
C.J.S. United States § 122.

1. Law governing

Loan and capital grant contract between Housing and Home Finance Administrator and local urban renewal agency is governed by Federal law. Johnson v. Redevelopment Agency of City of Oakland, Cal., C.A.Cal.1963, 317 F.2d 872, certiorari denied 84 S.Ct. 216, 375 U.S. 915, 11 L.Ed.2d 154.

2. Approval of plan

Proposed plan of City of Dallas and Housing Authority of City of Dallas to take by purchase or by condemnation

specified areas of land determined by Authority to be slum areas, and to redevelop such areas by installation of public facilities in way of streets, gutters, sewers, etc., and to sell or lease such lands to private persons, firms, corporations, associations, or public and political subdivisions of State, for private and public uses, was not authorized by this section. McCord v. Housing Authority of City of Dallas, Tex.Civ.App.1950, 234 S.W.2d 108, error refused 236 S.W. 2d 115, 149 Tex. 587.

3. Relocation of families

Complaint alleging that village and others had not made adequate relocation plans for inhabitants of area to be demolished as part of urban renewal project and that continuance of project would cause irreparable harm to plaintiffs was insufficient to state a cause of action to restrain village and others from proceeding with urban renewal project. Spadanuta v. Incorporated Village of Rockville Centre, 1962, 224 N.Y.S.2d 963, 33 Misc.2d 499, reversed on other grounds 230 N.Y.S. 2d 69, 16 A.D.2d 966, affirmed 237 N.Y.S. 2d 1002, 12 N.Y.2d 895, 188 N.E.2d 266.

Subsection (c) of this section relating to temporary relocation of families displaced from project areas, stating that in view of existing acute housing shortage each contract for financial aid should provide that there should be no demolition of residential structures if local governing body should determine that demolition would reasonably be expected to created undue housing hardship in the locality, though for the ultimate benefit of tenants in the project area, did not vest those tenants with legal capacity to sue to enjoin the prosecution and progress of slum clearance plans and contracts. Hunter v. City of New York, Sup.1953, 121 N.Y.S.2d 841.

Absence of any provision in subsection (c) of this section which would confer a right upon tenants in area affected by slum clearance to challenge or seek review of acts, determinations or exercise of discretion of Federal Administrator, negates any intent on part of Congress to confer such right on tenants as intended and ultimate beneficiaries of this subchapter. Id.

Provision of this section dealing with temporary relocation of families displaced by redevelopment projects requires Redevelopment Authority to make some effort toward relocation of displaced residents in suitable housing, but does not require Authority to delay redevelopment project until all such displaced persons are provided with shelter. Housing and Redevelopment Authority In and For City of Minneapolis v. Minneapolis Metropolitan Co., 1960, 104 N.W.2d 864, 259 Minn. 1.

4. Contracts

Contract, between plaintiff and city for urban renewal project providing that upon approval city would acquire title to the property and make such improvements as were required and then sell area at public auction at which plaintiff could acquire the land by bidding a minimum price of one dollar per square foot or a price based upon an appraised reuse value of the land, whichever was higher, or match highest bidder, was not illegal on ground that it was a contract for the disposition of land and that certain Federal statutes and regulations had not been observed before its execution. Rochester Park, Inc. v. City of Rochester, 1963, 238 N.Y.S.2d 822, 38 Misc.2d 714, affirmed 241 N.Y.S.2d 763, 19 A.D.2d 776.

5. Obligations of parties

Where Federal Housing and Home Finance Agency and local redevelopment authority contract required authority to conform to all valid agency requirements before Federal agency would pay sums provided for, resolution of local authority providing for conveyance of land to party before authority had complied with all Federal agency requirements, did not give rise to binding contractual obligation upon compliance with agency requirement and neither party was obligated before requirements had been met. Town of Brookline v. Brookline Redevelopment Authority, 1962, 183 N.E.2d 484, 344 Mass. 562.

6. Hearing

This section, requiring that contract with local agency provide for feasible plan of relocation, does not grant those faced with eviction as result of slum clearance and urban renewal project the statutory right to a hearing before Administrator to determine whether plan is feasible; and due process requires no such hearing. Gart v. Cole, D.C.Cal.1958, 166 F.Supp. 129, affirmed 263 F.2d 244, certiorari denied 79 S.Ct. 888, 359 U.S. 978, 3 L.Ed.2d 929.

Under this chapter, hearing required need not be held by public agency acquiring land, and where hearing held by state housing board met requirements of this chapter, this section was satisfied notwithstanding that hearing held by acquiring authority allegedly did not conform to this chapter. Bowker v. City of Worcester, Mass.1956, 136 N.E.2d 208.

7. Persons entitled to bring suit

Residents of urban redevelopment area had no standing to sue to enjoin municipal redevelopment agency from carrying out redevelopment project on ground that agency had no feasible plan for temporary relocation of families displaced from area as required by subsection (c) of this section and loan and capital grant contract required by this subchapter. Johnson v. Redevelopment Agency of City of Oakland, Cal., C.A.Cal.1963, 317 F.2d 872, certiorari denied 84 S.Ct. 216, 375 U.S. 915, 11 L.Ed.2d 154.

That residents of urban redevelopment area may have been misled in failing to invoke the jurisdiction of California courts under West's Ann.Cal.Health and Safety Code, §§ 33738, 33746, providing that any interested party may attack proposed redevelopment plan in state courts within 60 days after the plan has been adopted gave them no right to resort to Federal court to enjoin municipal redevelopment agency from carrying out redevelopment project on ground that agency had no feasible plan of relocation as required by subsection (c) of this section. Id.

§ 1455a. Submission of specifications by applicants

Every contract for a loan, grant, or contribution under this subchapter, for the construction of a project shall require the submission of specifications with respect to such construction prior to the authorization for the award of the construction contract and the submission of data with respect to the acquisition of land prior to the authorization to acquire such land. Aug. 2, 1954, c. 649, Title VIII, § 815, 68 Stat. 647.

Historical Note

Codification. Section was enacted as a part of the Housing Act of 1954, and not as a part of the Housing Act of 1949, which in general comprises this chapter. See, also, Reference in Text note under section 1441 of this title. In so far as section 815 of Act Aug. 2, 1954 related to the United States Housing Act of 1937, it is set out as section 1411d of this title.

§ 1456. Administrator's powers and duties—Appointment of Director; preparation and submission of annual budget; maintenance and audit of accounts

(a) In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Administrator, notwithstanding the provisions of any other law, shall—

(1) appoint a Director to administer the provisions of this subchapter under the direction and supervision of the Administrator and the basic rate of compensation of such position shall be the same as the basic rate of compensation established for the heads of the constituent agencies of the Housing and Home Finance Agency;

(2) prepare annually and submit a budget program as provided for wholly owned Government corporations by the Government Corporation Control Act, as amended;

(3) maintain an integral set of accounts which shall be audited annually by the General Accounting Office in accordance with the principles and procedures applicable to commercial

transactions as provided by the Government Corporation Control Act, as amended, and no other audit shall be required: *Provided*, That such financial transactions of the Administrator as the making of advances of funds, loans, or grants and vouchers approved by the Administrator in connection with such financial transactions shall be final and conclusive upon all officers of the Government.

(4) Repealed. Aug. 2, 1954, c. 649, Title VIII, § 802(e), 68 Stat. 643.

Deposit of funds; use of assets and receipts

(b) Funds made available to the Administrator pursuant to the provisions of this subchapter shall be deposited in a checking account or accounts with the Treasurer of the United States. Receipts and assets obtained or held by the Administrator in connection with the performance of his functions under this subchapter shall be available for any of the purposes of this subchapter (except for grants pursuant to section 1453 of this title), and all funds available for carrying out the functions of the Administrator under this subchapter (including appropriations therefor, which are authorized), shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Administrator in connection with the performance of such functions: *Provided*, That necessary expenses of inspections and audits, and of providing representatives at the site, of projects being planned or undertaken by local public agencies pursuant to this subchapter shall be compensated by such agencies by the payment of fixed fees which in the aggregate will cover the costs of rendering such services, and such expenses shall be considered nonadministrative; and for the purpose of providing such inspections and audits and of providing representatives at the sites, the Administrator may utilize any agency and such agency may accept reimbursement or payment for such services from such local public agencies or the Administrator, and credit such amounts to the appropriations or funds against which such charges have been made.

Specific powers, duties, and liabilities

(c) In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Administrator, notwithstanding the provisions of any other law, may—

(1) sue and be sued;

(2) foreclose on any property or commence any action to protect or enforce any right conferred upon him by any law, contract, or other agreement, and bid for and purchase at any foreclosure or any other sale any project or part thereof in connection with which he has made a loan or capital grant pursuant to this subchapter. In the event of any such acquisition, the Administrator may, notwithstanding any other provi-

sion of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, dispose of, and otherwise deal with, such project or part thereof: *Provided*, That any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

(3) enter into agreements to pay annual sums in lieu of taxes to any State or local taxing authority with respect to any real property so acquired or owned, and such sums shall approximate the taxes which would be paid upon such property to the State or local taxing authority, as the case may be, if such property were not exempt from taxation;

(4) sell or exchange at public or private sale, or lease, real or personal property, and sell or exchange any securities or obligations, upon such terms as he may fix;

(5) obtain insurance against loss in connection with property and other assets held;

(6) subject to the specific limitations in this subchapter, consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, amount of grant, or any other term, of any contract or agreement to which he is a party or which has been transferred to him pursuant to this subchapter;

(7) include in any contract or instrument made pursuant to this subchapter such other covenants, conditions, or provisions (including such covenants, conditions, or provisions as, in the determination of the Administrator, are necessary or desirable to prevent the payment of excessive prices for the acquisition of land in connection with projects assisted under this subchapter) as he may deem necessary to assure that the purposes of this subchapter will be achieved. No provision of this subchapter shall be construed or administered to permit speculation in land holding; and

(8) make advance or progress payments on account of any grant contracted to be made pursuant to this subchapter, notwithstanding the provisions of section 529 of Title 31, or any other provisions of this subchapter.

Service and supply contracts

(d) Section 5 of Title 41 shall not apply to any contract for services or supplies on account of any property acquired pursuant to this subchapter if the amount of such contract does not exceed $1,000.

Limitation on expenditures within one State

(e) Not more than 12½ per centum of the grant funds provided for in this subchapter shall be expended in any one State: *Provided*, That the Administrator, without regard to such limitation, may enter into contracts for grants aggregating not to exceed $100,000,000 (subject to the total authorization provided in section 1453(b) of this title) with local public agencies in States where more than two-thirds of the maximum grants permitted in the respective State under this subsection has been obligated.

(f) Repealed. Pub.L. 88–560, § 310(c), Sept. 2, 1964, 78 Stat. 790.

Construction of hotels and other transient housing

(g) No provision permitting the new construction of hotels or other housing for transient use in the redevelopment of any urban renewal area under this subchapter shall be included in the urban renewal plan unless the community in which the project is located, under regulations prescribed by the Administrator, has caused to be made a competent independent analysis of the local supply of transient housing and as a result thereof has determined that there exists in the area a need for additional units of such housing. July 15, 1949, c. 338, Title I, § 106, 63 Stat. 417; June 3, 1952, c. 362, 66 Stat. 98; June 30, 1953, c. 170, § 22, 67 Stat. 127; Aug. 2, 1954, c. 649, Title III, § 308, Title VIII, § 802(e), 68 Stat. 625, 643; Aug. 11, 1955, c. 783, Title I, § 106(b), 69 Stat. 637; Aug. 7, 1956, c. 1029, Title III, §§ 304, 305, 70 Stat. 1100; July 12, 1957, Pub.L. 85–104, Title III, §§ 303, 304, 71 Stat. 300; Sept. 23, 1959, Pub.L. 86–372, Title IV, §§ 408, 409(a) (1), (b), 410, 417(1), 73 Stat. 673, 674, 676; June 30, 1961, Pub.L. 87–70, Title III, § 304, 75 Stat. 167; Sept. 2, 1964, Pub.L. 88–560, Title III, § 310(c), 78 Stat. 790.

Historical Note

References in Text. The Government Corporation Control Act, as amended, referred to in subsection (a) (2), (3) is classified to chapter 14 of Title 31, Money and Finance.

1964 Amendment. Subsec. (f). Pub.L. 88–560 repealed subsec. (f), which related to relocation payments.

1961 Amendment. Subsec. (f) (2). Pub. L. 87–70 included payments to nonprofit organizations, substituted "$3,000 (or, if greater, the total certified actual moving expenses) in the case of a business concern or nonprofit organization" for "$3,000 in the case of a business concern", and inserted words "and actual direct losses of property" following "necessary moving expenses."

1959 Amendment. Subsec. (a) (3). Pub. L. 86–372, § 417(1), substituted "or grants and vouchers" for "or capital grants and vouchers."

Subsec. (b). Pub.L. 86–372, § 417(1), substituted "except for grants" for "except for capital grants."

Subsec. (c) (6). Pub.L. 86–372, § 417 (1), substituted "amount of grant" for "amount of capital grant."

Subsec. (c) (8). Pub.L. 86–372, § 417(1), substituted "any grant contracted" for "any capital grant contracted."

Subsec. (e). Pub.L. 86–372, §§ 408, 417 (1), substituted "Not more than 12½ per centum of the grant funds provided for in this subchapter shall be expended" for "Not more than 12½ per centum of the funds provided for in this subchapter, either in the form of loans or grants, shall be expended", "contracts for grants"

for "contracts for capital grants", and "maximum grants" for "maximum capital grants."

Subsec. (f) (2). Pub.L. 86-372, §§ 409 (a) (1), (b), substituted provisions defining relocation payments as payments by a local public agency resulting from displacement from an urban renewal area made necessary by the acquisition of real property by a local public agency or by any other public body, by code enforcement activities undertaken in connection with an urban renewal project, or by a program of voluntary rehabilitation of buildings or other improvements in accordance with an urban renewal plan for provisions which defined relocation payments as payments by a local public agency resulting from displacement by an urban renewal project included in an urban renewal area respecting which a contract for capital grant has been executed under this subchapter, inserted proviso prohibiting such payments after completion of the project or if completion is deferred solely for the purpose of obtaining further relocation payments, and increased the maximum payments for individuals and families from $100 to $200 and for business concerns from $2,500 to $3,000.

Subsec. (g). Pub.L. 86-372, § 410, added subsec. (g).

1957 Amendment. Subsec. (e). Pub.L. 85-104, § 303, substituted "12½ per centum" for "10 per centum".

Subsec. (f) (2). Pub.L. 85-104, § 304, increased maximum business relocation payments from $2,000 to $2,500 and authorized payments to individuals and families of fixed amounts in lieu of their reasonable moving expenses.

1956 Amendment. Subsec. (e). Act Aug. 7, 1956, § 304, substituted "$100,000,000" for "$70,000,000".

Subsec. (f). Act Aug. 7, 1956, § 305, added subsec. (f).

1955 Amendment. Subsec. (e). Act Aug. 11, 1955 increased the limitation on contracts for capital grants from $35,000,000 to $70,000,000.

1954 Amendment. Subsec. (a) (3). Act Aug. 2, 1954, § 802(e), substituted at the end a period for "; and".

Subsec. (a) (4). Act Aug. 2, 1954, § 802(e), struck out provisions of former par. (4), which related to submission of annual reports to the President and Congress and which are covered by section 1701o of Title 12, Banks and Banking.

Subsec. (b). Act Aug. 2, 1954, § 308, added the proviso relating to necessary expenses of inspections and audits, and to providing representatives at the site of projects.

1953 Amendment. Subsec. (e). Act June 30, 1953 added the proviso.

1952 Amendment. Subsec. (c) (8). Act June 3, 1952, added par. (8).

Relocation Payments for Expenses or Losses Incurred Prior to Sept. 23, 1959. Section 409(a) (2) of Pub.L. 86-372 provided that: "No relocation payments under section 106(f) of the Housing Act of 1949 [subsec. (f) of this section] shall be made for expenses or losses incurred prior to the date of the enactment of the Housing Act of 1959 [Sept. 23, 1959], except to the extent that such payments were authorized by such section as it existed prior to such date."

Legislative History: For legislative history and purpose of Act June 3, 1952, see 1952 U.S.Code Cong. and Adm.News, p. 1504. See, also, Act June 30, 1953, 1953 U.S.Code Cong. and Adm.News, p. 1806; Pub.L. 85-104, 1957 U.S.Code Cong. and Adm.News, p. 1319; Pub.L. 86-372, 1959 U.S.Code Cong. and Adm.News, p. 2844; Pub.L. 87-70, 1961 U.S.Code Cong. and Adm.News, p. 1923.

Federal Rules of Civil Procedure

Capacity to sue or be sued, see Rule 17(b), 28 U.S.C.A.

Notes of Decisions

Library references

Health ⇐7(3).
C.J.S. Health § 9 et seq.

1. Transient housing

Subsection (g) of this section stating that no provision permitting construction of hotels shall be included in urban renewal plans unless it is determined that there is need for such after independent survey does not prevent all future new construction of hotels unless survey has been made but applies only to urban renewal plans which have no provision for such and which were approved after effective date of 1959 Hous-

ing Act, Pub.L. 86-372. Pittsburgh Hotels Ass'n v. Urban Redevelopment Authority of Pittsburgh, C.A.Pa.1962, 309 F.2d 186, certiorari denied 83 S.Ct. 730, 372 U.S. 916, 9 L.Ed.2d 723.

That, after effective date of subsection (g) of this section which provided that no provision for hotels should be made until after survey disclosing need for such had been made, plan for parcel in which hotel was permitted was changed by removal of street and that height of proposed hotel would violate restrictions set forth in plan would not nullify fact that provision permitting construction existed prior to 1959 Housing Act, Pub.L. 86-372, so that erection was legal without survey. Id.

Congress has the power to regulate federally financed redevelopment projects and to require independent analysis of the need for transient housing prior to new construction. Pittsburgh Hotels Ass'n v. Urban Redevelopment Authority of Pittsburgh, D.C.Pa.1962, 202 F.Supp. 486, affirmed 309 F.2d 186, certiorari denied 83 S.Ct. 730, 372 U.S. 916, 9 L.Ed.2d 723.

2. Grievances

Even though residents of urban redevelopment area had no standing to sue to enjoin municipal agency from carrying out redevelopment project on ground that agency had no feasible plan of relocation as required by section 1455(c) of this title and loan and capital grant contract required by this subchapter, they were not without redress against decisions of agency and could present any grievances to Federal Housing and Home Finance Administrator. Johnson v. Redevelopment Agency of City of Oakland, Cal., C.A.Cal.1963, 317 F.2d 872, certiorari denied 84 S.Ct. 216, 375 U.S. 915, 11 L.Ed.2d 154.

3. Jurisdiction

In action by landowners and tenants in vicinity of slum redevelopment project of the City of New York partially financed by Federal funds under this subchapter, federal district court in New York correctly ruled that it had sufficient jurisdiction over Administrator and Regional Administrator of Federal Housing and Home Finance Agency to consider claims against the agency, where service was had on Regional Administrator at his office in New York where agency was doing business, and all underlying facts of the action were peculiarly local, resolution of the case would have a predominantly local impact, and landowners and tenants were seeking merely to restrain official action and not to compel an official to take some action for their benefit. Gart v. Cole, C.A.N.Y.1959, 263 F.2d 244, certiorari denied 79 S.Ct. 898, 359 U.S. 978, 3 L.Ed.2d 929.

Housing and Home Finance Agency may be treated as a corporation, and may be sued in any district where it maintains an office and does business; and suit against its Administrator in his official capacity is same as suit against agency; and service upon Regional Administrator in New York and upon Attorney General in Washington was sufficient to give federal court for New York district jurisdiction over Administrator of Agency. Gart v. Cole, D.C.Cal.1958, 166 F.Supp. 129, affirmed 270 F.2d 355, certiorari denied 80 S.Ct. 753, 362 U.S. 928, 4 L.Ed.2d 746.

4. Persons entitled to bring suit

Residents of urban redevelopment area had no standing to sue to enjoin municipal redevelopment agency from carrying out redevelopment project on ground that agency had no feasible plan for temporary relocation of families displaced from area as required by section 1455(c) of this title and loan and capital grant contract required by this subchapter. Johnson v. Redevelopment Agency of City of Oakland, Cal., C.A.Cal. 1963, 317 F.2d 872, certiorari denied 84 S.Ct. 216, 375 U.S. 915, 11 L.Ed.2d 154.

That residents of urban redevelopment area may have been misled in failing to invoke the jurisdiction of California courts under West's Ann.Cal.Health and Safety Code, §§ 33738, 33746, providing that any interested party may attack proposed redevelopment plan in state courts within 60 days after the plan has been adopted gave them no right to resort to federal court to enjoin municipal redevelopment agency from carrying out redevelopment project on ground that agency had no feasible plan of relocation as required by section 1455 (c) of this title. Id.

Standards provided by Congress for guidance of Administrator in exercise of his discretion in passing on application for subsidy under this chapter, did not confer individual legal rights upon plaintiffs, who lived, owned property or had business in area affected by project to which application related, separate from rights they had as members of general public. Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency, C.A.Ill.1962, 310 F.2d 99, certiorari denied 83 S.Ct. 1297, 373 U.S. 914, 10 L.Ed.2d 414.

The Legislature, through its lawfully created agencies, rather than "interested" citizens, was guardian of public needs to be served by social legislation, and such citizens had no right to challenge public authorities' decision to redevelop slum area as university campus instead of as residential and commercial area. Id.

The Housing Act of 1949, either prior or subsequent to 1959 amendment, gave hotel association and hotel owners and operators no standing to sue Urban Redevelopment Authority, city, motor hotel company and others, to enjoin erection by such company of motor hotel on parcel of land in redevelopment area until city had caused survey of need for transient housing to be made. Pittsburgh Hotels Ass'n v. Urban Redevelopment Authority of Pittsburgh, C.A.Pa.1962, 309 F.2d 186, certiorari denied 83 S.Ct. 730, 372 U.S. 916, 9 L.Ed.2d 723.

In action in federal district court in New York by landowners and tenants in vicinity of slum redevelopment project of the City of New York partially financed by federal funds under the Housing Act, section 1441 et seq. of this title, to enjoin execution of project, on ground of its asserted invalidity, landowners and tenants clearly had no standing to assert that city's sponsorship agreements violated alleged requirement of the Housing Act that there be open bidding on all property sold as part of the project, since alleged requirement of open bidding was designed to protect not the interests of landowners or tenants in redevelopment area, but those of the public at large, and landowners and tenants could not challenge expenditure of funds as representatives of so broad an interest. Gart v. Cole, C.A.N.Y.1959, 263 F.2d 244, certiorari denied 79 S.Ct. 898, 359 U.S. 978, 3 L.Ed.2d 929.

In action in federal district court in New York by landowners and tenants in vicinity of slum redevelopment project of the City of New York partially financed by federal funds under the Housing Act, section 1441 et seq. of this title, to enjoin execution of project, on ground of its alleged invalidity, landowners and tenants had standing to challenge refusal of Administrator of Federal Housing and Home Finance Agency to grant them an oral hearing on feasibility of city's relocation plan. Id.

Private hotel corporations had no standing to attack a 1955 redevelopment plan and its provision permitting the construction of a hotel notwithstanding they and their employees might be financially injured by prospective lawful competition, since such injuries were damnum absque injuria in that the Housing Acts were not passed for the benefit of hotels. Pittsburgh Hotels Ass'n v. Urban Redevelopment Authority of Pittsburgh, D.C.Pa.1962, 202 F.Supp. 486, affirmed 309 F.2d 186, certiorari denied 83 S.Ct. 730, 372 U.S. 916, 9 L.Ed.2d 723.

Owner of property in area of proposed slum clearance project was without legal capacity to sue to enjoin alleged improper expenditures by city of funds contributed by National Housing and Home Finance Agency pursuant to this subchapter, but if city was in fact improperly spending such funds, such was a matter for the consideration and concern of the Federal Administrator. Kaskel v. Impellitteri, 1953, 121 N.Y.S.2d 848, 204 Misc. 346, affirmed 120 N.Y.S.2d 758, 281 App. Div. 962, affirmed 115 N.E.2d 653, 306 N.Y. 73, reargument denied 115 N.E.2d 832, 306 N.Y. 609, certiorari denied 74 S.Ct. 629, 347 U.S. 934, 98 L.Ed. 1084.

This chapter did not confer any legal rights upon owners and residents in a slum clearance area separate from their position as members of general public, and therefore owners of property in such area could not challenge legality of a proceeding on basis that project was being financed in part by federal subsidy and terms of the subsidy contract had not been met, and in any event, such question was not a proper issue in a condemnation action. City of Chicago v. R. Zwick Co., 1963, 188 N.E.2d 489, 27 Ill.2d 128, appeal dismissed 83 S.Ct. 1538, 373 U.S. 542, 10 L.Ed.2d 687.

5. Res judicata

In action in federal district court in New York by landowners and tenants to enjoin execution of slum redevelopment project of city, on ground of its alleged invalidity, there was no valid constitutional objection to holding landowners and tenants bound by judgment in prior action in state court in New York, in which relief was denied, by plaintiffs of same classes as landowners and tenants, where all landowners and tenants in action in federal district court had ample notice of action in state court, and parties plaintiff in action in state court had no interests contrary to landowners and tenants in action in federal district court, and same counsel prosecuted both suits. Gart v. Cole, C.A.N.Y.1959, 263 F.2d 244, certiorari denied 79 S.Ct. 898, 359 U.S. 978, 3 L.Ed.2d 929.

Where certain claims asserted against Federal Housing and Home Finance Agency in action in federal district court

by landowners and tenants in vicinity of slum redevelopment project of city to enjoin execution of project, on ground of its alleged invalidity, were not and could not have been litigated in prior action in New York state court, such claims were not barred by judgment therein. Id.

In action in federal district court by landowners and tenants in vicinity of slum redevelopment project of city to enjoin execution of the project, on ground of its alleged invalidity, landowners and tenants were barred from asserting against Administrator and Regional Administrator of the Federal Housing and Home Finance Agency claim that agency's participation in project constituted an unconstitutional subsidy to a religious institution by judgment in prior action in state court in New York rejecting the claim, though Administrator and Regional Administrator were not parties to action in state court. Id.

6. Judicial review

Section 1009 of Title 5 gave no right of judicial review of agency action, approving subsidy application under this chapter, to plaintiffs who lived, owned property, or had businesses in affected area and favored original slum clearance program but objected when proposed plan for redevelopment of area for residential and commercial uses was changed to one for redevelopment of area as university campus. Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency, C.A.Ill.1962, 310 F.2d 99, certiorari denied 83 S.Ct. 1297, 373 U.S. 914, 10 L.Ed.2d 414.

This section permitting Administrator to sue or be sued is not an authorization for judicial review of administrative acts. King v. Pan Am. World Airways, D.C. Cal.1958, 166 F.Supp. 136, affirmed 270 F. 2d 355, certiorari denied 80 S.Ct. 753, 362 U.S. 928, 4 L.Ed.2d 746.

§ 1457. Property to be used for public housing or housing for moderate income families

(a) Upon approval of the Administrator and subject to such conditions as he may determine to be in the public interest, any real property held as part of an urban renewal project may be made available to (1) a limited dividend corporation, nonprofit corporation or association, cooperative, or public body or agency, or (2) a purchaser who would be eligible for a mortgage insured under section 1715*l* (d) (3) or (d) (4) of Title 12, for purchase at fair value for use by such purchaser in the provision of new or rehabilitated rental or cooperative housing for occupancy by families or individuals of moderate income.

(b) When it appears in the public interest that real property acquired as part of an urban renewal project should be used in whole or in part for a low-rent housing project assisted under the United States Housing Act of 1937, or under a State or local program found by the Administrator to have the same general purposes as the Federal program under such Act, the property shall be made available to the public housing agency undertaking the low-rent housing project at a price equal to its fair value, as determined in accordance with subsection (a) of this section, and such amount shall be included as part of the development cost of such low-rent housing project: *Provided,* That the local contribution in the form of tax exemption or tax remission required by section 1410(h) of this title, or by analogous provisions in legislation authorizing such State or local program, with respect to the low-rent housing project into which such property was incorporated on or after September 23, 1959, shall (if covered by a contract which, in the determination of the Public Hous-

ing Commissioner, will assure that such local contribution will be made during the entire period that the project is used as low-rent housing within the meaning of such Act, or by provisions found by the Administrator to give equivalent assurance in the case of State or local programs) be accepted as a local grant-in-aid equal in amount, as determined by the Administrator, to one-half (or one-third in the case of an urban renewal project on a three-fourths capital grant basis) of the difference between the cost of such property (including costs of land, clearance, site improvements, and a share, prorated on an area basis, of administrative, interest, and other project costs) and its sales price, and shall be considered a local grant-in-aid furnished in a form other than cash within the meaning of section 1460(d) of this title. July 15, 1949, c. 338, Title I, § 107, 63 Stat. 419; Aug. 2, 1954, c. 649, Title III, § 309, 68 Stat. 626; Sept. 23, 1959, Pub.L. 86–372, Title IV, § 411, 73 Stat. 674; June 30, 1961, Pub.L. 87–70, Title III, § 306(a), 75 Stat. 168; Sept. 2, 1964, Pub.L. 88–560, Title III, § 306, 78 Stat. 786.

Library references: Health ⇐32; C.J.S. Health § 22 et seq.

Historical Note

References in Text. The United States Housing Act of 1937, as amended, referred to in subsec. (b), is classified to chapter 8 of this title.

1964 Amendment. Pub.L. 88–560 provided that property held as part of an urban renewal project may be made available to purchasers eligible for a mortgage insured under section 1715*l* (d) (3) of this title, and that the price of property made available to a public housing agency undertaking the construction of a low-rent housing project shall be equal to its fair value as determined in accordance with subsec. (a) of this section, and eliminated provisions setting the price of the site to be made available to the public housing agency undertaking the low-rent housing project equal to the fair value of land to a private redeveloper who wants a site in the community for private rental housing with physical characteristics similar to those of the low-rent project and including such amount as part of the development cost of the low-rent project.

1961 Amendment. Pub.L. 87–70 substituted "Property to be used for public housing or housing for moderate income families" for "payment for land used in low-rent housing projects" in the section catchline, designated existing provisions as subsec. (a), substituted therein "land acquired as a part of an urban renewal project" for "land to be acquired as a part of an urban renewal project", and "was incorporated on or after September 23, 1959," for "is incorporated", and added subsec. (b).

1959 Amendment. Pub.L. 86–372 substituted "When it appears in the public interest that land to be acquired as part of an urban renewal project should be used in whole or in part as a site for a low-rent housing project assisted under the United States Housing Act of 1937, as amended, or under a State or local program found by the Administrator to have the same general purposes as the Federal program under such Act, the site shall be made available to the public housing agency undertaking the low-rent housing project at a price equal to the fair value of land to a private redeveloper who wants to buy a site in the community for private rental housing with physical characteristics similar to those of the proposed low-rent housing project" for "If the land for a low-rent housing project assisted under the United States Housing Act of 1937, as amended, is made available from a project assisted under this subchapter, payment equal to the fair value of the land for the uses specified in accordance with the urban renewal plan shall be made therefor by the public housing agency undertaking the housing project", and inserted proviso relating to tax exemption and tax remission.

1954 Amendment. Act Aug. 2, 1954 substituted "urban renewal plan" for "redevelopment plan".

Legislative History: For legislative history and purpose of Pub.L. 86–372, see 1959 U.S.Code Cong. and Adm.News, p. 2844. See, also, Pub.L. 87–70, 1961 U.S. Code Cong. and Adm.News, p. 1923.

§ 1458. Disposition of surplus Federal real property; sale at fair market value; disposition of proceeds

The President may at any time in his discretion, transfer, or cause to be transferred, to the Administrator any right, title, or interest held by the Federal Government or any department or agency thereof in any land (including buildings thereon) which is surplus to the needs of the Government and which a local public agency certifies will be within the area of a project being planned by it. When such land is sold to the local public agency by the Administrator, it shall be sold at a price equal to its fair market value, and the proceeds from such sale shall be covered into the Treasury as miscellaneous receipts. July 15, 1949, c. 338, Title I, § 108, 63 Stat. 419.

Historical Note

Delegation of Functions. For delegation of functions, vested in the President by this section, to the Director of the Bureau of the Budget, see section 1(n) of Ex.Ord.No.10530, May 11, 1954, 19 F.R. 2709, set out as a note under section 301 of Title 3, The President.

Cross References

Disposition of surplus property, see section 484 of Title 40, Public Buildings, Property, and Works.

Foreign excess property, see sections 511–514 of Title 40.

Proceeds from transfer, sale, etc., of property, see section 485 of Title 40.

Notes of Decisions

Library references

United States ⇐58.
C.J.S. United States §§ 75, 79.
C.J.S. Warehousemen and Safe Depositories § 60.

1. Injunctions

Taxpayer, who sustained no special injury different from that suffered by public at large, and who was not threatened with irreparable injury, was not entitled to a temporary injunction against use of property which had been acquired by private stock corporation pursuant to Federal Housing Act of 1949, as public parking area on theory that public funds were being used to set corporation up in a parking lot business. Martin v. Dayton Seaside Corp., 1960, 205 N.Y.S.2d 573, 25 Misc.2d 264.

§ 1459. Protection of labor standards

In order to protect labor standards—

(a) any contract for loan or capital grant pursuant to this subchapter shall contain a provision requiring that not less than the salaries prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Administrator, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development of the project involved and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, shall be paid to all laborers and mechanics, except

such laborers or mechanics who are employees of municipalities or other local public bodies, employed in the development of the project involved for work financed in whole or in part with funds made available pursuant to this subchapter; and the Administrator shall require certification as to compliance with the provisions of this paragraph prior to making any payment under such contract; and

(b) the provisions of section 874 of Title 18, and of section 276c of Title 40, shall apply to work financed in whole or in part with funds made available for the development of a project pursuant to this subchapter.

July 15, 1949, c. 338, Title I, § 109, 63 Stat. 419; Aug. 2, 1954, c. 649, Title III, § 310, 68 Stat. 626.

Library references: Labor Relations ⇐1268; C.J.S. Master and Servant §§ 151(24), 151(25).

Historical Note

References in Text. The Davis-Bacon Act, referred to in par. (a), is classified to sections 276a to 276a—5 of Title 40, Public Buildings, Property, and Works.

1954 Amendment. Par. (a) Act Aug. 2, 1954 made it clear that the labor standards apply only to development work financed in whole or in part with funds under this subchapter, and excepted from the prevailing wage requirements laborers or mechanics who are employees of municipalities or other local public bodies.

Par. (b). Act Aug. 2, 1954 substituted "work financed in whole or in part with funds made available for the development of a project pursuant to this subchapter" for "any project financed in whole or in part with funds made available pursuant to this subchapter".

Par. (c). Act Aug. 2, 1954 omitted subsec. (c) in the general amendment of this section. Such subsec. (c) required contractors to submit monthly reports to the Secretary of Labor.

Enforcement of Labor Standards. Labor standards under provisions of this section to be prescribed and enforced by Secretary of Labor, see 1950 Reorg.Plan No. 14, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, set out in note under section 133z—15 of Title 5, Executive Departments and Government Officers and Employees.

§ 1460. Definitions

The following terms shall have the meanings, respectively, ascribed to them below, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular number:

(a) "Urban renewal area" means a slum area or a blighted, deteriorated, or deteriorating area in the locality involved which the Administrator approves as appropriate for an urban renewal project.

(b) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the general plan of the locality as a whole and to the workable program referred to in section 1451 of this title and shall be consistent with definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements; and (2)

shall be sufficiently complete to indicate, to the extent required by the Administrator for the making of loans and grants under this subchapter, such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, and building requirements.

(c) "Urban renewal project" or "project" may include undertakings and activities of a local public agency in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or a program of code enforcement in an urban renewal area, or any combination or part thereof, in accordance with such urban renewal plan. Such undertakings and activities may include—

(1) acquisition of (i) a slum area or a deteriorated or deteriorating area, or (ii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community, or (iii) open land necessary for sound community growth which is to be developed for predominantly residential uses, or (iv) air rights in an area consisting principally of land in highways, railway or subway tracks, bridge or tunnel entrances, or other similar facilities which have a blighting influence on the surrounding area and over which air rights sites are to be developed for the elimination of such blighting influences and for the provision of housing (and related facilities and uses) designed specifically for, and limited to, families and individuals of low or moderate income: *Provided*, That the requirement in subsection (a) of this section that the area be a slum area or a blighted, deteriorated or deteriorating area shall not be applicable in the case of projects under clauses (iii) and (iv) hereof: *Provided further*, That the aggregate amount of capital grants for projects under clause (iv) shall not exceed 5 per centum of the aggregate amount of grants authorized by this subchapter to be contracted for after September 2, 1964;

(2) demolition and removal of buildings and improvements;

(3) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this subchapter in accordance with the urban renewal plan;

(4) disposition of any property acquired in the urban renewal area (including sale, leasing or retention by the local public

agency itself) at its fair value for uses in accordance with the urban renewal plan or as provided in section 1457 of this title;

(5) carrying out plans for programs of code enforcement or voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan: *Provided*, That no program of code enforcement shall be included as part of an urban renewal project unless the locality shall agree to increase its total expenditures with respect to code enforcement, during the period such project is under contract for a loan or capital grant, by an amount equal to the required local grants-in-aid with respect to the code enforcement included as part of such project;

(6) acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;

(7) construction of foundations and platforms necessary for the provision on air rights sites of housing (and related facilities and uses) designed specifically for, and limited to, families and individuals of low or moderate income; and

(8) acquisition and repair or rehabilitation for guidance purposes, and resale by the local public agency, of structures which are located in the urban renewal area and which, under the urban renewal plan, are to be repaired or rehabilitated for dwelling use or related facilities: *Provided*, That the local public agency shall not acquire for such purposes, in any urban renewal area, structures which contain or will contain more than (A) one hundred dwelling units, or (B) 5 per centum of the total number of dwelling units in such area which, under the urban renewal plan, are to be repaired or rehabilitated, whichever is the lesser.

Notwithstanding any other provision of this subchapter, no contract shall be entered into for any loan or capital grant under this subchapter for any project which provides for demolition and removal of buildings and improvements unless the Administrator determines that the objectives of the urban renewal plan could not be achieved through rehabilitation of the project area.

For the purposes of this subchapter, the term "project" shall not include (except as provided in paragraphs (7) and (8) above) the construction or improvement of any building, and the term "redevelopment" and derivatives thereof shall mean development as well as redevelopment. For any of the purposes of section 1459 of this title, the term "project" shall not include any donations or provisions made as local grants-in-aid and eligible as such pursuant to clauses (2) and (3) of section 1460(d) of this title.

Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this subchapter for such a project: *Provided further*, That the aggregate amount of capital grants contracted to be made pursuant to this subchapter with respect to such projects after September 23, 1959 shall not exceed 30 per centum of the aggregate amount of grants authorized by this subchapter to be contracted for after such date.

In addition to all other powers hereunder vested, where land within the purview of clause (1) (ii) or (1) (iii) of the first paragraph of this subsection (whether it be predominantly residential or nonresidential in character) is to be redeveloped for predominantly nonresidential uses, loans and advances under this subchapter may be extended therefor if the governing body of the local public agency determines that such redevelopment for predominantly nonresidential uses is necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives and to afford maximum opportunity for the redevelopment of the project area by private enterprise: *Provided*, That loans and outstanding advances to any local public agency pursuant to the authorization of this sentence shall not exceed 2½ per centum of the estimated gross project costs of the projects undertaken under other contracts with such local public agency pursuant to this subchapter.

(d) "Local grants-in-aid" shall mean assistance by a State, municipality, or other public body, or (in the case of cash grants or donations of land or other real property) any other entity, in connection with any project on which a contract for capital grant has been made under this subchapter, in the form of (1) cash grants to defray expenditures within the purview of subsection (e) (1) of this section; (2) donations, at cash value, of land or other real property (exclusive of land in streets, alleys, and other public rights-of-way which may be vacated in connection with the project, or of air rights over streets, alleys, and other public rights-of-way) in the urban renewal area, and demolition, removal, or other work or improvements in the urban renewal area, at the cost thereof, of the types described in clause (2) and clause (3) of the second sentence of subsection (c) of this section; and (3) the provision, at their cost, of public buildings or other public facilities (other than publicly owned housing and revenue producing public utilities the capital cost of which is wholly financed with local bonds or obligations payable solely out of revenues derived from service charges) which are necessary for

carrying out in the area the urban renewal objectives of this subchapter in accordance with the urban renewal plan: *Provided*, That in any case where, in the determination of the Administrator, any park, playground, public building, or other public facility is of direct benefit both to the urban renewal area and to other areas, and the approximate degree of the benefit to such other areas is estimated by the Administrator at 20 per centum or more of the total benefits, the Administrator shall provide that, for the purpose of computing the amount of the local grants-in-aid for the project, there shall be included only such portion of the cost of such facility as the Administrator estimates to be proportionate to the approximate degree of the benefit of such facility to the urban renewal area: *And provided further*, That for the purpose of computing the amount of local grants-in-aid under this subsection with respect to any project covered by a Federal-aid contract under this subchapter, the estimated cost (as determined by the Administrator) of parks, playgrounds, public buildings, or other public facilities may be deemed to be the actual cost thereof if (i) the construction or provision thereof is not completed at the time of final disposition of land in the project to be acquired and disposed of under the urban renewal plan, and (ii) the Administrator has received assurances satisfactory to him that such park, playground, public building, or other public facility will be constructed or completed when needed and within a time prescribed by him: *And provided further*, That in any case where a public facility furnished as a local grant-in-aid is financed in whole or in part by special assessments against real property in the project area acquired by the local public agency as part of the project, an amount equal to the total special assessments against such real property (or, in the case of a computation pursuant to the proviso immediately preceding, the estimated amount of such total special assessments) shall be deducted from the cost of such facility for the purpose of computing the amount of the local grants-in-aid for the project. With respect to any demolition or removal work, improvement or facility for which a State, municipality, or other public body has received or has contracted to receive any grant or subsidy from the United States, or any agency or instrumentality thereof, the portion of the cost thereof defrayed or estimated by the Administrator to be defrayed with such subsidy or grant shall not be eligible for inclusion as a local grant-in-aid.

Notwithstanding any other provision of this subsection, no donation or provision of a public improvement or public facility of a type falling within the purview of this subsection shall be deemed to be ineligible as a local grant-in-aid for any project solely on the basis that the construction of such improvement or facility was commenced without notification to the Administrator or prior to Federal recognition of such project, if such construction was commenced not more than three years prior to the authorization by the Administrator of a contract for loan or capital grant for the project.

(e) "Gross project cost" shall comprise (1) the amount of the expenditures by the local public agency with respect to any and all undertakings necessary to carry out the project (including the payment of carrying charges, but not beyond the point where the project is completed), and (2) the amount of such local grants-in-aid as are furnished in forms other than cash. There may be included as part of the gross project cost, under any contract for loan or grant heretofore or hereafter executed under this subchapter, with respect to moneys of the local public agency which are actually expended and outstanding for undertakings (other than in the form of local grants-in-aid) necessary to carry out the project, in the absence of carrying charges on such moneys, an amount in lieu of carrying charges which might otherwise have been payable thereon for the period such moneys are expended and outstanding but not beyond the point where the project is completed, computed for each six-month period or portion thereof, at an interest rate to be determined by the Administrator after taking into consideration for each preceding six-month period the average interest rate borne by any obligations of local public agencies for short-term funds obtained from sources other than the Federal Government in the manner provided in section 1452(c) of this title: *Provided,* That such amount may be computed on the net total of all such moneys of the local public agency remaining expended and outstanding, less other moneys received from the project undertaken in excess of project expenditures, in all projects of the local public agency under this subchapter, and allocated, as the Administrator may determine, to each of such projects. With respect to a project for which a contract for capital grant has been executed on a three-fourths basis pursuant to section 1453(a) (2) (C) of this title, gross project cost shall include, in lieu of the amount specified in clause (1) above, the amount of the expenditures by the local public agency with respect to the following undertakings and activities necessary to carry out such project:

(i) acquisition of land (but only to the extent of the consideration paid to the owner and not title, appraisal, negotiating, legal, or any other expenditures of the local public agency incidental to acquiring land), disposition of land, demolition and removal of buildings and improvements, and site preparation and improvements, all as provided in paragraphs (1), (2), (3), (4), (6), (7), and (8) of subsection (c) of this section; and

(ii) the payment of carrying charges related to the undertakings in clause (i) (including amounts in lieu of carrying charges as determined above), exclusive of taxes and payments in lieu of taxes, but not beyond the point where such project is completed;

but not the cost of any other undertakings and activities (including, but without being limited to, the cost of surveys and plans, legal

services of any kind, and all administrative and overhead expenses of the local public agency) with respect to such project. Where real property in the project area is acquired and is owned as part of the project by the local public agency and such property is not subject to ad valorem taxes by reason of its ownership by the local public agency and payments in lieu of taxes are not made on account of such property, there may (with respect to any project for which a contract of Federal assistance under this subchapter is in force or is hereafter executed, other than a project on which a contract for capital grant is made on a three-fourths basis pursuant to section 1453(a) (2) (C) of this title) be included, at the discretion of the Administrator, in gross project cost an amount equal to the ad valorem taxes which would have been levied upon such property if it had been subject to ad valorem taxes, but in all cases prorated for the period during which such property is owned by the local public agency as part of the project, and such amount shall also be considered a cash local grant-in-aid within the purview of subsection (d) of this section. Such amount, and the amount of taxes or payments in lieu of taxes included in gross project cost, shall be subject to the approval of the Administrator and such rules, regulations, limitations, and conditions as he may prescribe.

Where a project includes the acquisition of property which has been damaged because of the collapse or subsidence of underlying coal mines, or underground mine fires, and the property is to be acquired from an individual, family, business concern, or nonprofit organization which was the owner of such property at the time the damage first occurred, the amount otherwise allowable as the acquisition price of such property may be increased by an amount equal to so much of any diminution in the value of such property as is determined to be reasonably attributable to such damage and to represent an otherwise uncompensated and (but for such acquisition) uncompensable loss actually sustained by such owner.

(f) "Net project cost" shall mean the difference between the gross project cost and the aggregate of (1) the total sales prices of all land or other property sold, and (2) the total capital values (i) imputed, on a basis approved by the Administrator, to all land or other property leased, and (ii) used as a basis for determining the amounts to be transferred to the project from other funds of the local public agency to compensate for any land or other property retained by it for use in accordance with the urban renewal plan.

(g) "Going Federal rate" means (with respect to any contract for a loan or advance entered into after the first annual rate has been specified as provided in this sentence) the annual rate of interest which the Secretary of the Treasury shall specify as applicable to the six-month period (beginning with the six-month period ending December 31, 1953) during which the contract for loan or advance

under this subchapter is authorized by the Administrator, which applicable rate for each six-month period shall be determined by the Secretary of the Treasury by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month of May or the month of November, as the case may be, next preceding such six-month period, on all outstanding marketable obligations of the United States having a maturity date of fifteen or more years from the first day of such month of May or November, and by adjusting such estimated average annual yield to the nearest one-eighth of 1 per centum. Any contract for a loan or advance, authorized by the Administrator after September 2, 1964, shall provide for a single interest rate which shall be applicable also to future amendments of the contract which provide additional funds thereunder, and shall further provide for a periodic revision of the interest rate on the balance outstanding or to be outstanding on such loan or advance based on the going Federal rate on the date of such revision: *Provided,* That any contract for a loan or advance authorized prior to September 2, 1964 shall be amended (with the first amendment to such contract authorized after September 2, 1964) to provide for such a single interest rate (based on the going Federal rate at the time such amendment is authorized) and for periodic revision thereof.

(h) "Local public agency" means any State, county, municipality, or other governmental entity or public body, or two or more such entities or bodies, authorized to undertake the project for which assistance is sought. "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(i) "Land" means any real property, including improved or unimproved land, structures, improvements, easements, incorporeal hereditaments, estates, and other rights in land, legal or equitable.

(j) "Administrator" means the Housing and Home Finance Administrator.

(k) "Federal recognition" means execution of any contract for financial assistance under this subchapter or concurrence by the Administrator in the commencement, without such assistance, of surveys and plans. June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; July 15, 1949, c. 338, Title I, § 110, 63 Stat. 420; June 30, 1953, c. 170, § 24(a), 67 Stat. 127; Aug. 2, 1954, c. 649, Title III, § 311, 68 Stat. 626; Aug. 11, 1955, c. 783, Title I, § 106(c), 69 Stat. 637; Aug. 7, 1956, c. 1029, Title III, § 302(a) (2), (b)–(d), 70 Stat. 1097; July 12, 1957, Pub.L. 85–104, Title III, §§ 302(3)–(5), 305, 306, 71 Stat. 300, 301; Sept. 23, 1959, Pub.L. 86–372, Title IV, §§ 412–414(a), 415, 416, 417(3), 73 Stat. 675, 677; June 30, 1961, Pub.L. 87–70, Title III, §§ 301(c), 306(b), 307, 308, 314(c), 75 Stat. 166, 168, 172; Sept. 2, 1964, Pub.L. 88–560, Title III, §§ 301(b), (c), 303(b), 307–309, 311(a), 78 Stat. 785, 787, 788, 790.

Historical Note

1964 Amendment. Subsec. (c). Pub.L. 88-560, §§ 301(b), (c), 307, 308(b), included a program of code enforcement in an urban renewal area within "urban renewal project", the acquisition of air rights over areas such as highways, tracks, bridge and tunnel entrances, limited the grants for projects under clause (1) (iv) to not exceeding 5% of the amount authorized by this subchapter to be contracted for after Sept. 2, 1964, substituted "projects under clauses (iii) and (iv) hereof" for "an open land project" in par. (1), provided that no program of code enforcement shall be included as part of a project unless the locality agrees to increase its expenditures for code enforcement by an amount equal to the required local grants-in-aid, no contract shall be entered for any loan or grant for any project which provides for removal of buildings and improvements unless the Administrator determines that the objectives of the renewal plan could not be achieved through rehabilitation of the project area, redesignated former par. (7) as (8) and added par. (7).

Subsec. (d). Pub.L. 88-560, § 308(c), inserted "or of air rights over streets, alleys, and other public rights-of-way."

Subsec. (e). Pub.L. 88-560, §§ 308(d), 311(a), inserted reference to par. (8) of subsec. (c) of this section, and provided that where a project includes the acquisition of property affected by coal mine subsidence or underground mine fires and the property is to be acquired from the owner at the time the damage occurred, the acquisition price may be increased equal to the diminution of such property as is reasonably attributable to such damage and an otherwise uncompensated and uncompensable loss actually sustained by such owner.

Subsec. (g). Pub.L. 88-560, §§ 303(b), 309, provided that contracts authorized after Sept. 2, 1964, shall provide for a single interest rate applicable also to future contract amendments, for periodic revision of the interest rate on the outstanding balance based on the going Federal rate on the date of revision, and that contracts authorized prior to Sept. 2, 1964, shall be amended to provide for such single rate and for periodic revision thereof, deleted "for any project" preceding "under this subchapter is authorized by the Administrator", and provisions that contracts may be revised or superseded by later contracts so that the going Federal rate shall mean the going rate on the date the later contract is authorized.

1961 Amendment. Subsec. (c). Pub.L. 87-70, §§ 306(b), 307(a), (b), 308, 314(c), struck out the word "initial" which preceded "leasing or retention" and inserted words "or as provided in section 1457 of this title" in par. (4), added par. (7), inserted the phrase "(except as provided in paragraph (7) above)" in the third sentence, and substituted "30 per centum" for "20 per centum" in the second proviso of the fifth sentence.

Subsec. (e). Pub.L. 87-70, § 301(c), 307(c), substituted "pursuant to section 1453(a) (2) (C) of this title" for "pursuant to the proviso in the second sentence of section 1453(a) of this title" in the third and fourth sentences, and included par. (7) of subsec. (c) of this section in cl. (i).

1959 Amendment. Subsec. (b). Pub.L. 86-372, § 412, inserted ", to the extent required by the Administrator for the making of loans and grants under this subchapter," following "to indicate" in cl. (2).

Subsec. (c). Pub.L. 86-372, § 413, increased the limitation on the amount of capital grants for areas which are not predominantly residential from not more than 10 per centum to not more than 20 per centum of the aggregate amount of grants authorized, inserted provisions permitting assistance if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, and eliminated provisions which authorized assistance where an area which is not clearly predominantly residential in character contains a substantial number of slum, blighted, deteriorated, or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public health, safety, and welfare in the locality involved and such area is not appropriate for predominantly residential uses.

Subsec. (d). Pub.L. 86-372, § 414(a), added paragraph providing that no donation or provision of a public improvement or public facility of a type falling within the purview of this subsection shall be deemed to be ineligible as a local grant-in-aid for any project solely on the basis that the construction of such

improvement or facility was commenced without notification to the Administrator or prior to Federal recognition of such project, if such construction was commenced not more than three years prior to the authorization by the Administrator of a contract for loan or capital grant for the project.

Subsec. (e). Pub.L. 86-372, § 415, included as part of the gross project cost an amount in lieu of carrying charges which might otherwise have been payable thereon for the period moneys of the local public agency which are actually expended and outstanding for undertakings necessary to carry out the project are expended and outstanding but not beyond the point where the project is completed.

Subsec. (g). Pub.L. 86-372, § 416, substituted "for any project under this subchapter is authorized" for "is approved", "Any such contract" for "Any contract", and "later contract is authorized" for "contract is revised or superseded by such later contract."

Subsec. (k). Pub.L. 86-372, § 417(3), added subsec. (k).

1957 Amendment. Subsec. (b). Pub.L. 85-104, § 305, inserted in (1), the words "and shall be consistent with definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements", and deleted from (2) the requirement of indicating the local objectives in the urban renewal plan, itself.

Subsec. (d). Pub.L. 85-104, §§ 302(3), 306, inserted the words "to defray expenditures within the purview of subsection (e) (1) of this section" preceding the first semicolon, and inserted in the second proviso of the first sentence, the words "with respect to any project covered by a Federal-aid contract under this subchapter".

Subsec. (e). Pub.L. 85-104, § 302(4), (5), inserted proviso calculating gross project cost as the sum of expenditures by the local public agency to carry out the project, excluding expenditures for surveys, plans, legal services and administration, and inserted in the second sentence, "other than a project on which a contract for capital grant is made on a three-fourths basis pursuant to the proviso in the second sentence of section 1453(a) of this title".

1956 Amendment. Subsec. (b). Act Aug. 7, 1956, § 302(a) (2), inserted "and" after the semicolon at the end of clause (1), and eliminated "; and (3) shall include, for any part of the urban renewal area proposed to be acquired and redeveloped in accordance with clause (1) of the second sentence of subsection (c) of this section, a redevelopment plan approved by the governing body of the locality", substituting a period therefor.

Subsec. (c). Act Aug. 7, 1956, § 302 (b) (1), in amending subsec. (c) generally, consolidated provisions relating to slum clearance redevelopment with those relating to rehabilitation and conservation, and made applicable to an urban renewal area the requirement that an urban redevelopment area either be predominantly residential to begin with or else be redeveloped for predominantly residential uses.

Subsec. (d). Act Aug. 7, 1956, § 302(b) (2), (c), substituted in clause (2) of the first sentence, "the second sentence" for "either the second or third sentence", eliminated the phrase ", public facilities financed by special assessments against land in the project area," in clause (3) preceding "and revenue producing public utilities", and added proviso deducting from the cost of facilities, for the purpose of computing the local grant-in-aid, an amount equal to the special assessments against land in the project area which is acquired by the local public agency as part of the project.

Subsec. (e). Act Aug. 7, 1956, § 302(d), added provisions allowing communities which do not receive taxes or payments in lieu of taxes for land in the project area, to include in gross project cost an amount equal to the ad valorem taxes which would have been levied upon such property if it had been subject to ad valorem taxes, and that in calculating the amount allowable, the amount would be prorated for the period during which the property is owned by the local public agency as part of the project and inclusion of any such payments in gross project costs shall be subject to the approval of the Housing Administrator.

1955 Amendment. Subsec. (c). Act Aug. 11, 1955 authorized loans and advances where land is to be redeveloped for predominantly nonresidential uses.

1954 Amendment. Act Aug. 2, 1954 amended section generally to add more definitions, and to re-define some of the terms used in this subchapter, in view of the general amendment of this subchapter by other sections of such Act.

1953 Amendment. Subsec. (g). Act June 30, 1953, amended subsec. (g) so that the minimum base interest rate, un-

der the definition of "Going Federal rate", would:

1. Reflect market yields on Government bonds, instead of interest rates specified in the bonds when issued;

2. Reflect the yield on obligations of the United States having 15 years or more to run to maturity, instead of the rate on a bond which could have a maturity as low as 10 years;

3. Reflect the average yield during a full 1-month period on all outstanding obligations of the United States having 15 years or more to run to maturity, instead of the rate on a single recent issue of bonds;

4. Retain the base rate, once it was specified by the Secretary of the Treasury, instead of varying from month to month as new bonds are issued; and

5. Be adjusted to the nearest one-eighth of 1 per cent.

Transfer of Functions. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of Act June 30, 1949. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees.

Amendment of Contracts Executed Prior to September 2, 1964. Section 311(b) of Pub.L. 88-560 provided that: "Any contract under title I of the Housing Act of 1949 [this subchapter] executed prior to the date of enactment of the Housing Act of 1964 [Sept. 2, 1964] may be amended to provide for payment of the increased amounts authorized under the amendment made by subsection (a) [to subsec. (c) of this section] with respect to any uncompleted project if the project includes acquisitions which, under any State or local law in effect on such date, would involve expenditures by a local public agency that could not otherwise be included in the costs of such project."

Waiver of Requirements of Subsec. (d) of This Section for Certain Assistance Provided During Period from July 1, 1957, Through Dec. 31, 1957. Section 414 (b) of Pub.L. 86-372 provided that: "The requirement in section 110(d) of the Housing Act of 1949 [subsec. (d) of this section] that the assistance provided by a State, municipality, or other public body under that section, in order to qualify as a local grant-in-aid, shall be in connection with a project on which a contract for capital grant has been made under title I of that Act [this subchapter], shall not apply to assistance provided during the period from July 1, 1957, through December 31, 1957, in connection with urban renewal activities which were extended Federal recognition within sixty days after the provision of such assistance was initiated."

Legislative History: For legislative history and purpose of Act June 30, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 1806. See, also, Act Aug. 7, 1956, 1956 U.S.Code Cong. and Adm.News, p. 4509; Pub.L. 85-104, 1957 U.S.Code Cong. and Adm.News, p. 1319; Pub.L. 86-372, 1959 U.S.Code Cong. and Adm.News, p. 2844; Pub.L. 87-70, 1961 U.S.Code Cong. and Adm.News, p. 1923.

Cross References

Blighted or deteriorated area requirement for urban renewal not applicable to disaster area, see section 1462 of this title.

General Services Administration, see section 630 of Title 5, Executive Departments and Government Officers and Employees.

Residential area requirement for urban renewal assistance as not applicable to disaster area, see section 1462 of this title.

Urban renewal plan, requirement of conformance to a general plan of the locality not applicable to disaster areas, see section 1462 of this title.

Notes of Decisions

1. Generally

As used in this section, stating that financial assistance should not be extended with respect to any urban renewal area which was not predominantly residential in character and which was not to be redeveloped for predominantly residential uses but providing that Administrator could extend financial assistance if governing body of local public agency determined that redevelopment of "such an area" for predominantly nonresidential uses was necessary, quoted words had reference to urban renewal area which

was not predominantly residential and which was not to be redeveloped for predominantly residential uses. Blachman v. Erieview Corp., C.A.Ohio 1962, 311 F.2d 85, certiorari denied 83 S.Ct. 934, 372 U.S. 941, 9 L.Ed.2d 967.

Amendments to this section authorized financial assistance for redevelopment of downtown nonresidental areas, notwithstanding provisions of original section prohibiting such grants. Blachman v. Erieview Corp., D.C.Ohio 1962, 205 F.Supp. 797, affirmed 311 F.2d 85, certiorari denied 83 S.Ct. 934, 372 U.S. 941, 9 L.Ed.2d 967.

Property owners in area to be redeveloped had no standing to maintain suit to enjoin expenditure of federal funds by redevelopment agency. In re Bunker Hill Urban Renewal Project 1B of Community Redevelopment Agency of City of Los Angeles, Cal.1964, 389 P.2d 538, 37 Cal.Rptr. 74.

§ 1461. Repealed. Aug. 2, 1954, c. 649, Title III, § 313, 68 Stat. 629

Historical Note

Section Acts July 31, 1953, c. 302, Title I, § 101, 67 Stat. 305; June 24, 1954, c. 359, Title I, § 101, 68 Stat. 283, which related to conditions precedent to approval of local slum clearance programs, is covered by other sections in this subchapter. See, particularly, sections 1451 and 1455 of this title.

§ 1462. Disaster areas; urban renewal assistance; nonapplicability of certain requirements

Where the local governing body certifies, and the Administrator finds, that an urban area is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe which the President, pursuant to section 1855a(a) of this title, has determined to be a major disaster, the Administrator is authorized to extend financial assistance under this subchapter for an urban renewal project with respect to such area without regard to the following:

(1) the "workable program" requirement in section 1451(c) of this title, except that any contract for temporary loan or capital grant pursuant to this section shall obligate the local public agency to comply with the "workable program" requirement in section 1451(c) of this title by a future date determined to be reasonable by the Administrator and specified in such contract;

(2) the requirements in section 1455(a) (iii) and section 1460(b) (1) of this title that the urban renewal plan conform to a general plan of the locality as a whole and to the workable program referred to in section 1451(c) of this title;

(3) the "relocation" requirements in section 1455(c) of this title: *Provided,* That the Administrator finds that the local public agency has presented a plan for the encouragement, to the maximum extent feasible, of the provision of dwellings suitable for the needs of families displaced by the catastrophe or by redevelopment or rehabilitation activities;

(4) the "public hearing" requirement in section 1455(d) of this title;

(5) the requirements in sections 1452 and 1460 of this title that the urban renewal area be a slum area or a blighted, deteriorated, or deteriorating area; and

(6) the requirements in section 1460 of this title with respect to the predominantly residential character or predominantly residential re-use of urban renewal areas.

In the preparation of the urban renewal plan with respect to a project aided under this section, the local public agency shall give due regard to the removal or relocation of dwellings from the site of recurring floods or other recurring catastrophes in the project area. July 15, 1949, c. 338, Title I, § 111, as added Aug. 7, 1956, c. 1029, Title III, § 307(a), 70 Stat. 1101.

Library references: Health ⇨32; C.J.S. Health § 22 et seq.

§ 1463. Financial assistance for urban renewal projects in areas involving colleges, universities, or hospitals—Authorization; local grant-in-aid

(a) In any case where an educational institution or a hospital is located in or near an urban renewal project area and the governing body of the locality determines that, in addition to the elimination of slums and blight from such area, the undertaking of an urban renewal project in such area will further promote the public welfare and the proper development of the community (1) by making land in such area available for disposition, for uses in accordance with the urban renewal plan, to such educational institution or hospital for redevelopment in accordance with the use or uses specified in the urban renewal plan, (2) by providing, through the redevelopment of the area in accordance with the urban renewal plan, a cohesive neighborhood environment compatible with the functions and needs of such educational institution or hospital, or (3) by any combination of the foregoing, the Administrator is authorized to extend financial assistance under this subchapter for an urban renewal project in such area without regard to the requirements in section 1460 of this title with respect to the predominantly residential character or predominantly residential re-use of urban renewal areas. The aggregate expenditures made by any such institution or hospital (directly or through a private redevelopment corporation or municipal or other public corporation) for the acquisition within, adjacent to, or in the immediate vicinity of the project area, of land, buildings, and structures to be redeveloped or rehabilitated by such institution for educational uses or by such hospital for hospital uses in accordance with the urban renewal plan (or with a development plan proposed by such institution, hospital, or corporation, found acceptable by the Administrator after considering the standards specified in section

1460(b) of this title, and approved under State or local law after public hearing) and for the demolition of such buildings and structures if, pursuant to such urban renewal or development plan, the land is to be cleared and redeveloped, and for the relocation of occupants from buildings and structures to be demolished or rehabilitated, as certified by such institution or hospital to the local public agency and approved by the Administrator, shall be a local grant-in-aid in connection with such urban renewal project: *Provided,* That no such expenditure shall be eligible as a local grant-in-aid in any case where the property involved is acquired by such educational institution or hospital from a local public agency which, in connection with its acquisition or disposition of such property, has received, or contracted to receive, a capital grant pursuant to this subchapter.

Expenditures by educational institutions and hospitals; eligibility as a local grant-in-aid

(b) No expenditure made by any educational institution or hospital, as provided in subsection (a) of this section shall be deemed ineligible as a local grant-in-aid (1) in connection with any urban renewal project if made not more than seven years prior to the authorization by the Administrator of a contract for a loan or capital grant for such project, or (2) in connection with any such project for which the Administrator, prior to September 25, 1963, has authorized a loan or capital grant contract if made not more than five years prior to the submission of an application for financial assistance under this subchapter for such urban renewal project.

Aggregate expenditures by public authority deemed a local grant-in-aid

(c) The aggregate expenditures made by any public authority, established by any State, for acquisition, demolition, and relocation in connection with land, buildings, and structures acquired by such public authority and leased to an educational institution for educational uses or to a hospital for hospital uses shall be deemed a local grant-in-aid to the same extent as if such expenditures had been made directly by such educational institution or hospital.

Definitions

(d) As used in this section—

(1) the term "educational institution" means any educational institution of higher learning, including any public educational institution or any private educational institution, no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(2) the term "hospital" means any hospital licensed by the State in which such hospital is located, including any public hospital or any nonprofit hospital, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

July 15, 1949, c. 338, Title I, § 112, as added Sept. 23, 1959, Pub.L. 86–372, Title IV, § 418, 73 Stat. 677, and amended June 30, 1961, Pub.L. 87–70, Title III, § 309, 75 Stat. 169.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1961 Amendment. Subsec. (a). Pub.L. 87–70 designated existing provisions as subsec. (a), authorized assistance to hospitals, provided that expenditures made through municipal or other public corporations shall be considered as local grant-in-aid, inserted the proviso stating that no expenditure shall be eligible as a local grant-in-aid in any case where the property is involved is acquired by the educational institution or hospital from a local public agency which, in connection with its acquisition or disposition of such property, has received, or contracted to receive, a capital grant pursuant to this subchapter, eliminated provisions which provided that no expenditure shall be deemed ineligible as a local grant-in-aid in connection with any project if made not more than five years prior to the authorization of a contract for a loan or capital grant for such urban renewal project, and transferred the definition of "educational institution" to subsec. (d) of this section.

Subsecs. (b)–(d). Pub.L. 87–70 added subsecs. (b)–(d).

Legislative History: For legislative history and purpose of Pub.L. 86–372, see 1959 U.S.Code Cong. and Adm.News, p. 2844. See, also, Pub.L. 87–70, 1961 U.S. Code Cong. and Adm.News, p. 1923.

§ 1464. Redevelopment areas—Urban renewal assistance

(a) Whenever the Secretary of Commerce certifies to the Administrator (1) that any county, city, or other municipality (in this section referred to as a "municipality") is situated in an area designated under section 5 of the Area Redevelopment Act as a redevelopment area, and (2) that there is a reasonable probability that with assistance provided under such Act and other undertakings the area will be able to achieve more than temporary improvement in its economy, the Administrator is authorized to provide financial assistance to a local public agency in any such municipality under this subchapter and the provisions of this section.

Nonapplicability of certain requirements

(b) Subject to the provisions of subsection (e) of this section, the Administrator may provide such financial assistance under this section without regard to the requirement or limitations of section 1460 (c) of this title that the project area be predominantly residential in character or be redeveloped for predominantly residential uses under the urban renewal plan, and without regard to any of the limitations of that section on the undertaking of projects for predominantly nonresidential uses.

Disposition of lands for industrial or commercial uses; fair value; obligations of purchasers, lessees, and assignees of property

(c) Notwithstanding any other provision of this subchapter, a contract for financial assistance under this section may include provisions permitting the disposition of any land in the project area designated under the urban renewal plan for industrial or commercial uses to any public agency or nonprofit corporation for subsequent

disposition as promptly as practicable by such public agency or corporation for the redevelopment of the land in accordance with the urban renewal plan: *Provided*, That any disposition of such land to such public agency or corporation under this section shall be made at its fair value for uses in accordance with the urban renewal plan: *And provided further*, That only the purchaser from or lessees of such public agency or corporation, and their assignees, shall be required to assume the obligations relating to the commencement of improvements imposed under section 1455(b) of this title.

Completion of projects notwithstanding termination of area status

(d) Following the execution of any contract for financial assistance under this section with respect to any project, the Administrator may exercise the authority vested in him under this section as well as other provisions of this subchapter for the completion of such projects, notwithstanding any determination made after the execution of such contract that the area in which the project is located is no longer a redevelopment area under the Area Redevelopment Act.

Limitation on expenditures; exclusion of expenditures from aggregate amount of capital grants for urban renewal projects

(e) Not more than 10 per centum of the funds authorized for capital grants under section 1453 of this title after May 1, 1961 shall be used for the purpose of providing financial assistance under this section. Amounts used for such purpose shall not be taken into account for the purpose of the limitation contained in the second proviso of the fifth sentence of section 1460(c) of this title. July 15, 1949, c. 338, Title I, § 113, as added May 1, 1961, Pub.L. 87–27, § 14, 75 Stat. 57.

Historical Note

References in Text. Section 5 of the Area Redevelopment Act and such Act (meaning the Area Redevelopment Act), referred to in subsec. (a), are classified to section 2504 and chapter 28, respectively, of this title.

The Area Redevelopment Act, referred to in subsec. (d), is classified to chapter 28 of this title.

Termination of Authority. Termination of section and authority thereunder at close of June 30, 1965, see section 29 (a) of Pub.L. 87-27, set out as section 2525 of this title.

Legislative History: For legislative history and purpose of Pub.L. 87–27, see 1961 U.S.Code Cong. and Adm.News, p. 1567.

§ 1465. Relocation—Financial assistance to displaced individuals, families, businesses, and nonprofit organizations

(a) Notwithstanding any other provision of this subchapter, an urban renewal project may include the making of payments as prescribed in this section to displaced individuals, families, business concerns, and nonprofit organizations; and any contract for financial assistance under this subchapter shall provide that the capital grant otherwise payable for the project shall be increased by an amount

equal to such payments and that no part of the amount of such payments shall be required to be contributed as part of the local grant-in-aid. As used in this section, "displaced" refers to displacement from an urban renewal area made necessary by (1) the acquisition of real property by a local public agency or by any other public body, (2) code enforcement activities undertaken in connection with an urban renewal project, or (3) a program of voluntary rehabilitation of buildings or other improvements in accordance with an urban renewal plan.

Payments to business concerns or nonprofit organizations; considerations; maximum amounts

(b) A local public agency may pay to any displaced business concern or nonprofit organization—

(1) its reasonable and necessary moving expenses and any actual direct losses of property except goodwill or profit (which are incurred on and after August 7, 1956, and for which reimbursement or compensation is not otherwise made): *Provided*, That such payment shall not exceed $3,000 (or, if greater, the total certified actual moving expenses); and

(2) an additional $1,500 in the case of a private business concern with average annual net earnings of less than $10,000 per year which (A) was doing business in a location in the urban renewal area on the date of local approval of the urban renewal plan (or of acquisition of real property under the third sentence of section 1452(a) of this title), (B) is displaced on or after January 27, 1964, and (C) is not part of an enterprise having establishments outside the urban renewal area.

Notwithstanding the provisions of clause (1) of the preceding sentence, a business concern which is not being displaced from an urban renewal area shall be eligible for payments under such clause (1) of its certified actual moving expenses with respect to its outdoor advertising displays being removed from the urban renewal area in the same manner as though such business concern were being displaced.

Payments to individuals and families; considerations; computation of amount; maximum amounts; restrictions

(c) (1) A local public agency may pay to any displaced individual or family his or its reasonable and necessary moving expenses and any actual direct losses of property (which are incurred on and after August 7, 1956, and for which reimbursement or compensation is not otherwise made): *Provided*, That such payment shall not exceed $200: *And provided further*, That the Administrator may authorize payment to individuals and families of fixed amounts (not to exceed $200 in any case) in lieu of their respective reasonable and necessary moving expenses and actual direct losses of property.

(2) A local public agency may pay (in addition to any amount under paragraph (1) of this subsection), on behalf of any displaced

family or any displaced individual sixty-two years of age or over, during the first five months after displacement, a relocation adjustment payment, not to exceed $500, to assist such displaced individual or family to acquire a decent, safe, and sanitary dwelling. The relocation adjustment payment shall be an amount which, when added to 20 per centum of the annual income of the displaced individual or family at the time of displacement, equals the average rental required, for a 12-month period, for such a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the displaced individual or family (in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities): *Provided*, That such payment shall be made only to an individual or family who is unable to secure a dwelling unit in a low-rent housing project assisted under the United States Housing Act of 1937, or under a State or local program found by the Administrator to have the same general purposes as the Federal program under such Act: *Provided further*, That payments under this paragraph shall be available only in the case of families, and individuals sixty-two years of age or over, displaced on or after January 27, 1964.

Rules and regulations; finality of administrative decisions; promptness of payments

(d) The Administrator is authorized to establish such rules and regulations as he may deem appropriate in carrying out the provisions of this section and may provide in any contract with a local public agency, or in regulations promulgated by the Administrator, that determinations of any duly designated officer or agency as to eligibility for and the amount of relocation assistance authorized by this section shall be final and conclusive for any purposes and not subject to redetermination by any court or any other officer. Such regulations shall include provisions to assure that relocation payments, as authorized by this section, shall be made as promptly as possible to all families, individuals, business concerns, and nonprofit organizations found to be eligible for such payments by reason of their having been displaced from property in the urban renewal area, without regard to any subsequent proceedings, determinations, or events relating to such property which do not bear upon whether such displacement in fact occurred. July 15, 1949, c. 338, Title I, § 114, as added Sept. 2, 1964, Pub.L. 88–560, Title III, § 310(a), 78 Stat. 788.

Historical Note

References in Text. The United States Housing Act of 1937, referred to in subsec. (c), is classified to chapter 8 of this title.

Amendment of Contracts Executed Prior to September 2, 1964. Section 310(b) of Pub.L. 88–560 provided that: "Any contract with a local public agency which was executed under title I of the Housing Act of 1949 [this subchapter] before the date of the enactment of this Act [Sept. 2, 1964] may be amended to provide for payments authorized by section 114 of the Housing Act of 1949 [this section]."

SUBCHAPTER III.—FARM HOUSING

§ 1471. Financial assistance by Secretary of Agriculture; definitions; conditions of eligibility

(a) The Secretary of Agriculture (hereinafter referred to as the "Secretary") is authorized, subject to the terms and conditions of this subchapter, to extend financial assistance, through the Farmers Home Administration, (1) to owners of farms in the United States and in the Territories of Alaska and Hawaii and in Puerto Rico and the Virgin Islands, to enable them to construct, improve, alter, repair, or replace dwellings and other farm buildings on their farms, to provide them, their tenants, lessees, sharecroppers, and laborers with decent, safe, and sanitary living conditions and adequate farm buildings as specified in this subchapter, and (2) to owners of other real estate in rural areas to enable them to provide dwellings and related facilities for their own use and buildings adequate for their farming operations, and (3) to elderly persons who are or will be the owners of land in rural areas for the construction, improvement, alteration, or repair of dwellings and related facilities, the purchase of previously occupied dwellings and related facilities and the purchase of land constituting a minimum adequate site, in order to provide them with adequate dwellings and related facilities for their own use.

(b) (1) For the purpose of this subchapter, the term "farm" shall mean a parcel or parcels of land operated as a single unit which is used for the production of one or more agricultural commodities and which customarily produces or is capable of producing such commodities for sale and for home use of a gross annual value of not less than the equivalent of a gross annual value of $400 in 1944, as determined by the Secretary. The Secretary shall promptly determine whether any parcel or parcels of land constitute a farm for the purposes of this subchapter whenever requested to do so by any interested Federal, State, or local public agency, and his determination shall be conclusive.

(2) For the purposes of this subchapter, the terms "owner", "farm", and "mortgage" shall be deemed to include, respectively, the lessee of, the land included in, and other security interest in, any leasehold interest which the Secretary determines has an unexpired term (A) in the case of a loan, for a period sufficiently beyond the repayment period of the loan to provide adequate security and a reasonable probability of accomplishing the objectives for which the loan is made, and (B) in the case of a grant for a period sufficient to accomplish the objectives for which the grant is made.

(3) For the purposes of this subchapter, the term "elderly persons" means persons who are 62 years of age or over.

(c) In order to be eligible for the assistance authorized by subsection (a) of this section, the applicant must show (1) that he is the owner of a farm which is without a decent, safe, and sanitary dwelling for himself and his family and necessary resident farm labor, or for the family of the operating tenant, lessee, or sharecropper, or without other farm buildings adequate for the type of farming in which he engages or desires to engage, or that he is the owner of other real estate in a rural area without an adequate dwelling or related facilities for his own use or buildings adequate for his farming operations, or that he is an elderly person in a rural area without an adequate dwelling or related facilities for his own use; (2) that he is without sufficient resources to provide the necessary housing and buildings on his own account; and (3) that he is unable to secure the credit necessary for such housing and buildings from other sources upon terms and conditions which he could reasonably be expected to fulfill.

(d) As used in this subchapter (except in sections 1473 and 1474 (b) of this title) the terms "farm", "farm dwelling", and "farm housing", shall include dwellings or other essential buildings of eligible applicants. July 15, 1949, c. 338, Title V, § 501, 63 Stat. 432; June 30, 1961, Pub.L. 87–70, Title VIII, §§ 801(a), 803, 75 Stat. 186; Sept. 28, 1962, Pub.L. 87–723, § 4(a) (1), 76 Stat. 670.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1962 Amendment. Subsec. (a) (3). Pub. L. 87–723, § 4(a) (1) (A), added cl. (3).

Subsec. (b) (3). Pub.L. 87–723, § 4(a) (1) (B), added par. (3).

Subsec. (c) (1). Pub.L. 87–723, § 4(a) (1) (C), inserted provisions in cl. (1) requiring the applicant for assistance to show in the alternative that he is an elderly person in a rural area without an adequate dwelling or related facilities for his own use.

1961 Amendment. Subsec. (a). Pub.L. 87–70, § 803(a), authorized assistance to owners of other real estate in rural areas to enable them to provide dwellings and related facilities for their own use and buildings adequate for their farming operations.

Subsec. (b). Pub.L. 87–70, § 801(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub.L. 87–70, § 803(b), permitted the applicant to show that he is the owner of other real estate in a rural area without an adequate dwelling or related facilities for his own use or buildings adequate for his farming operations.

Subsec. (d). Pub.L. 87–70, § 803(c), added subsec. (d).

Admission of Alaska and Hawaii to Statehood. Alaska was admitted into the Union on Jan. 3, 1959 upon the issuance of Proc. No. 3269, Jan. 5, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959 upon the issuance of Proc. No. 3309, Aug. 25, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub.L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub.L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923. See, also, Pub.L. 87–723, 1962 U.S. Code Cong. and Adm.News, p. 2737.

Cross References

Farmers Home Administration, see section 1981 of Title 7, Agriculture.

§ 1472. Loans for housing and buildings on adequate farms —Terms of loan

(a) If the Secretary determines that an applicant is eligible for assistance as provided in section 1471 of this title and that the applicant has the ability to repay in full the sum to be loaned, with interest, giving due consideration to the income and earning capacity of the applicant and his family from the farm and other sources, and the maintenance of a reasonable standard of living for the owner and the occupants of said farm, a loan may be made by the Secretary to said applicant for a period of not to exceed thirty-three years from the making of the loan with interest at a rate not to exceed 4 per centum per annum on the unpaid balance of principal. In cases of applicants who are elderly persons, the Secretary may accept the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability.

Provisions of loan instrument

(b) The instruments under which the loan is made and the security given shall—

(1) provide for security upon the applicant's equity in the farm or such other security or collateral, if any, as may be found necessary by the Secretary reasonably to assure repayment of the indebtedness;

(2) provide for the repayment of principal and interest in accordance with schedules and repayment plans prescribed by the Secretary;

(3) contain the agreement of the borrower that he will, at the request of the Secretary, proceed with diligence to refinance the balance of the indebtedness through cooperative or other responsible private credit sources whenever the Secretary determines, in the light of the borrower's circumstances, including his earning capacity and the income from the farm, that he is able to do so upon reasonable terms and conditions;

(4) be in such form and contain such covenants as the Secretary shall prescribe to secure the payment of the loan with interest, protect the security, and assure that the farm will be maintained in repair and that waste and exhaustion of the farm will be prevented.

July 15, 1949, c. 338, Title V, § 502, 63 Stat. 433; June 30, 1961, Pub. L. 87–70, Title VIII, § 801(b), 75 Stat. 186; Sept. 28, 1962, Pub.L. 87–723, § 4(a) (2), 76 Stat. 671.

Historical Note

1962 Amendment. Subsec. (a). Pub.L. 87–723 authorized the Secretary to accept, in the case of applicants, who are elderly persons, the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability.

1961 Amendment. Subsec. (b) (1). Pub. L. 87–70 substituted "or such other security" for "and such additional security."

Legislative History: For legislative history and purpose of Pub.L. 87–70 see 1961 U.S.Code Cong. and Adm.News, p. 1923. See, also, Pub.L. 87–723, 1962 U.S. Code Cong. and Adm.News, p. 2737.

§ 1473. Loans for housing and buildings on potentially adequate farms; conditions and terms

If the Secretary determines (a) that, because of the inadequacy of the income of an eligible applicant from the farm to be improved and from other sources, said applicant may not reasonably be expected to make annual repayments of principal and interest in an amount sufficient to repay the loan in full within the period of time prescribed by the Secretary as authorized in this subchapter; (b) that the income of the applicant may be sufficiently increased within a period of not to exceed five years by improvement or enlargement of the farm or an adjustment of the farm practices or methods; and (c) that the applicant has adopted and may reasonably be expected to put into effect a plan of farm improvement, enlargement, or adjusted practices or production which, in the opinion of the Secretary, will increase the applicant's income from said farm within a period of not to exceed five years to the extent that the applicant may be expected thereafter to make annual repayments of principal and interest sufficient to repay the balance of the indebtedness less payments in cash and credits for the contributions to be made by the Secretary as hereinafter provided, the Secretary may make a loan in an amount necessary to provide adequate farm dwellings and buildings on said farm under the terms and conditions prescribed in section 1472 of this title. In addition, the Secretary may agree with the borrower to make annual contributions during the said five-year period in the form of credits on the borrower's indebtedness in an amount not to exceed the annual installment of interest and 50 per centum of the principal payments accruing during any installment year up to and including the fifth installment year, subject to the conditions that the borrower's income is, in fact, insufficient to enable the borrower to make payments in accordance with the plan or schedule prescribed by the Secretary and that the borrower pursues his plan of farm reorganization and improvements or enlargement with due diligence.

This agreement with respect to credits or principal and interest upon the borrower's indebtedness shall not be assignable nor accrue to the benefit of any third party without the written consent of the

Secretary and the Secretary shall have the right, at his option, to cancel the agreement upon the sale of the farm or the execution or creation of any lien thereon subsequent to the lien given to the Secretary, or to refuse to release the lien given to the Secretary except upon payment in cash of the entire original principal plus accrued interest thereon less actual cash payments of principal and interest when the Secretary determines that the release of the lien would permit the benefits of this section to accrue to a person not eligible to receive such benefits. July 15, 1949, c. 338, Title V, § 503, 63 Stat. 434.

Cross References

Assignments of claims void, see section 203 of Title 31, Money and Finance.

§ 1474. Special loans and grants for minor improvements; terms; loans for enlargement or development

(a) In the event the Secretary determines that an eligible applicant cannot qualify for a loan under the provisions of sections 1472 and 1473 of this title and that repairs or improvements should be made to a farm dwelling occupied by him, in order to make such dwelling safe and sanitary and remove hazards to the health of the occupant, his family, or the community, and that repairs should be made to farm buildings in order to remove hazards and make such buildings safe, the Secretary may make a grant or a combined loan and grant, to the applicant to cover the cost of improvements or additions, such as repairing roofs, providing toilet facilities, providing a convenient and sanitary water supply, supplying screens, repairing or providing structural supports, or making other similar repairs or improvements. No assistance shall be extended to any one individual under this subsection in the form of a loan, grant, or combined loan and grant, in excess of $1,000. Any portion of the sums advanced to the borrower treated as a loan shall be secured and be repayable in accordance with the principles and conditions set forth in this subchapter. Sums made available by grant may be made subject to the conditions set out in this subchapter for the protection of the Government with respect to contributions made on loans by the Secretary.

(b) In order to encourage adequate family-size farms the Secretary may make loans under this section and section 1473 of this title to any applicant whose farm needs enlargement or development in order to provide income sufficient to support decent, safe, and sanitary housing and other farm buildings, and may use the funds made available under clause (b) of section 1483 of this title for such purposes. July 15, 1949, c. 338, Title V, § 504, 63 Stat. 434; Sept. 28, 1962, Pub.L. 87–723, § 4(c) (3), 76 Stat. 672.

Historical Note

1962 Amendment. Subsec. (a). Pub.L. 87–723 substituted "in the form of a loan, grant, or combined loan and grant in excess of $1,000" for "(1) in the form of a loan, or combined loan and grant, in excess of $1,000, or (2) in the form of a grant (whether or not combined with a loan) in excess of $500."

Legislative History: For legislative history and purpose of Pub.L. 87–723, see 1962 U.S.Code Cong. and Adm.News, p. 2737.

§ 1475. Moratorium on loan payments

During any time that any such loan is outstanding, the Secretary is authorized under regulations to be prescribed by him to grant a moratorium upon the payment of interest and principal on such loan for so long a period as he deems necessary, upon a showing by the borrower that due to circumstances beyond his control, he is unable to continue making payments of such principal and interest when due without unduly impairing his standard of living. In cases of extreme hardship under the foregoing circumstances, the Secretary is further authorized to cancel interest due and payable on such loans during the moratorium. Should any foreclosure of such a mortgage securing such a loan upon which a moratorium has been granted occur, no deficiency judgment shall be taken against the mortgagor if he shall have faithfully tried to meet his obligation. July 15, 1949, c. 338, Title V, § 505, 63 Stat. 435.

§ 1476. Buildings and repairs—Construction in accordance with plans and specifications; supervision and inspection; technical services and research

(a) In connection with financial assistance authorized in sections 1471–1474 and sections 1484–1486 of this title, the Secretary shall require that all new buildings and repairs financed under this subchapter shall be substantially constructed and in accordance with such building plans and specifications as may be required by the Secretary. Buildings and repairs constructed with funds advanced pursuant to this subchapter shall be supervised and inspected, as may be required by the Secretary, by competent employees of the Secretary. In addition to the financial assistance authorized in sections 1471–1474 and sections 1484–1486 of this title, the Secretary is authorized to furnish, through such agencies as he may determine, to any person, including a person eligible for financial assistance under this subchapter, without charge or at such charges as the Secretary may determine, technical services such as building plans, specifications, construction supervision and inspection, and advice and information regarding farm dwellings and other buildings.

Research and technical studies for reduction of costs and adaptation and development of fixtures and appurtenances

(b) The Secretary is further authorized to conduct research and technical studies including the development, demonstration, and promotion of construction of adequate farm dwellings and other buildings for the purpose of stimulating construction, improving the architectural design and utility of such dwellings and buildings, and utilizing new and native materials, economies in materials and construction methods, and new methods of production, distribution, assembly, and construction, with a view to reducing the cost of farm dwellings and buildings and adapting and developing fixtures and appurtenances for more efficient and economical farm use.

Research, study, and analysis of farm housing

(c) The Secretary is further authorized to carry out a program of research, study, and analysis of farm housing in the United States to develop data and information on—

(1) the adequacy of existing farm housing;

(2) the nature and extent of current and prospective needs for farm housing, including needs for financing and for improved design, utility, and comfort, and the best methods of satisfying such needs;

(3) problems faced by farmers and other persons eligible under section 1471 of this title in purchasing, constructing, improving, altering, repairing, and replacing farm housing;

(4) the interrelation of farm housing problems and the problems of housing in urban and suburban areas; and

(5) any other matters bearing upon the provision of adequate farm housing.

Grants for research and study programs

(d) To the extent determined by him to be advisable, the Secretary may carry out the research and study programs authorized by subsections (b) and (c) of this section through grants made by him on such terms, conditions, and standards as he may prescribe to land-grant colleges established pursuant to sections 301–308 of Title 7 or through such other agencies as he may select.

Preparation and submission of estimates of housing needs

(e) The Secretary of Agriculture shall prepare and submit to the President and to the Congress estimates of national farm housing needs and reports with respect to the progress being made toward meeting such needs, and correlate and recommend proposals for such executive action or legislation necessary or desirable for the furtherance of the national housing objective and policy established by this Act with respect to farm housing, together with such other reports or information as may be required of the Secretary by the President or the Congress. July 15, 1949, c. 338, Title V, § 506, 63 Stat. 435; June 30, 1961, Pub.L. 87–70, Title VIII, §§ 804(b) (1), 805(a), 75

Stat. 188; Sept. 28, 1962, Pub.L. 87–723, § 4(c) (2), 76 Stat. 672; Sept. 2, 1964, Pub.L. 88–560, Title V, § 503(c), 78 Stat. 798.

Historical Note

References in Text. "This Act", referred to in subsec. (c), refers to the Housing Act of 1949, Act July 15, 1949. For distribution of that Act in the Code see note under section 1441 of this title.

1964 Amendment. Subsec. (a). Pub.L. 88–560 inserted the reference to section 1486 of this title in two instances.

1962 Amendment. Subsec. (a). Pub.L. 87–723 substituted "sections 1484 and 1485" for "section 1484", in two instances.

1961 Amendment. Subsec. (a). Pub.L. 87–70 §§ 804(b) (1), 805(a) (1), inserted a reference to section 1484 of this title in two instances, and eliminated provisions which authorized the conduct of research and technical studies including the development, demonstration, and promotion of construction of adequate farm dwellings and other buildings for the purposes of stimulating construction, improving architectural design and utility, utilizing new and native materials, economies in materials and construction methods, and new methods of production, distribution, assembly, and construction, which provisions are now contained in subsec. (b) of this section.

Subsec. (b). Pub.L. 87–70, § 805(a) (3), redesignated former subsec. (a) as (b). Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub.L. 87–70, § 805 (a) (3), added subsecs. (c) and (d).

Subsec. (e). Pub.L. 87–70, § 805(a) (2), redesignated former subsec. (b) as (e).

Farm Housing Research by Land-Grant Colleges. Pub.L. 85–104, Title VI, § 603, July 12, 1957, 71 Stat. 304, as amended by Pub.L. 86–372, Title VIII, § 803, Sept. 23, 1959, 73 Stat. 686, authorized the Housing and Home Finance Administrator to undertake a United States farm housing study program through grants to land-grant colleges, prescribed June 30, 1961 as the expiration date for authority to make the grants, and authorized necessary appropriations to carry out the program.

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923. See, also, Pub.L. 87–723, 1962 U.S. Code Cong. and Adm.News, p. 2737.

§ 1477. Preferences for veterans and families of deceased servicemen

As between eligible applicants seeking assistance under sections 1471–1474, inclusive, of this title, the Secretary shall give preference to veterans and the families of deceased servicemen. As used herein, a "veteran" shall mean a person who served in the military forces of the United States during any war between the United States and any other nation or during the period beginning June 27, 1950, and ending on such date as shall be determined by Presidential proclamation or concurrent resolution of Congress and who was discharged or released therefrom on conditions other than dishonorable. "Deceased servicemen" shall mean persons who served in the military forces of the United States during any war between the United States and any other nation or during the period beginning June 27, 1950, and ending on such date as shall be determined by Presidential proclamation or concurrent resolution of Congress and who died in service before the termination of such war or such period. July 15, 1949, c. 338, Title V, § 507, 63 Stat. 436; June 30, 1953, c. 174, § 3, 67 Stat. 132; June 30, 1961, Pub.L. 87–70, Title VIII, § 804(b) (2), 75 Stat. 188.

Library references: Armed Services ⇐111; C.J.S. Army and Navy § 60.

Historical Note

1961 Amendment. Pub.L. 87–70 substituted "under sections 1471–1474, inclusive, of this title" for "under this subchapter."

1953 Amendment. Act June 30, 1953 enlarged the definition of "veteran" and "deceased servicemen" to include members of the armed forces who have served during the Korean conflict.

Continuation of Provisions. Section 1 (a) (20) of Joint Res. July 3, 1952, c. 570, 66 Stat. 332, as amended by Joint Res. Mar. 31, 1953, c. 13, § 1, 67 Stat. 18, provided that the qualification period should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc. No. 2914, 15 F.R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond July 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

Repeal of Prior Acts Continuing Section. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

Proclamation No. 3080. Proc. No. 3080, Jan. 5, 1955, 20 F.R. 173, fixed Jan. 31, 1955, as the date ending the period during which persons must have served in the military forces in order that such persons come within the meaning of the terms "veteran" and "deceased servicemen," contained in this section, by reason of service during the period beginning June 27, 1950.

Legislative History: For legislative history and purpose of Act June 30, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 1833. See, also, Pub.L. 87–70, 1961 U.S. Code Cong. and Adm.News, p. 1923.

§ 1478. Local committees to assist Secretary—Composition, appointment, and compensation; chairman; promulgation of procedural rules; forms and equipment

(a) For the purposes of this subsection and subsection (b) of this section, the Secretary may use the services of any existing committee of farmers operating (pursuant to laws or regulations carried out by the Department of Agriculture) in any county or parish in which activities are carried on under this subchapter. In any county or parish in which activities are carried on under this subchapter and in which no existing satisfactory committee is available, the Secretary is authorized to appoint a committee composed of three persons residing in the county or parish. Each member of such existing or newly appointed committee shall be allowed compensation at the rate determined by the Secretary while engaged in the performance of duties under this subchapter and, in addition, shall be allowed such amounts as the Secretary may prescribe for necessary traveling and subsistence expenses. One member of the committee shall be designated by the Secretary as chairman. The Secretary shall prescribe rules governing the procedures of the committees, furnish forms and equipment necessary for the performance of their duties, and authorize and provide for the compensation of

such clerical assistance as he deems may be required by any committee.

Duties

(b) The committees utilized or appointed pursuant to this section shall examine applications of persons desiring to obtain the benefits of this subchapter and shall submit recommendations to the Secretary with respect to each applicant as to whether the applicant is eligible to receive the benefits of this subchapter, whether by reason of his character, ability, and experience, he is likely successfully to carry out undertakings required of him under a loan or grant under this subchapter, and whether the farm with respect to which the application is made is of such character that there is a reasonable likelihood that the making of the loan or grant requested will carry out the purposes of this subchapter. The committees shall also certify to the Secretary as to the amount of the loan or grant. The committees shall, in addition, perform such other duties under this subchapter as the Secretary may require. July 15, 1949, c. 338, Title V, § 508, 63 Stat. 436; June 30, 1961, Pub.L. 87–70, Title VIII, § 806, 75 Stat. 188.

Library References: Health ⇔3, 7; C.J.S. Health §§ 4, 6, 7 et seq.

Historical Note

1961 Amendment. Subsec. (a). Pub.L. 87–70, § 806(a), substituted "at the rate determined by the Secretary" for "at the rate of $5 per day."

Subsec. (b). Pub.L. 87–70, § 806(a), substituted "certify to the Secretary as to the amount of the loan or grant" for "certify to the Secretary their opinions of the reasonable values of the farms."

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923.

§ 1479. General powers of Secretary

(a) The Secretary, for the purposes of this subchapter, shall have the power to determine and prescribe the standards of adequate farm housing and other buildings, by farms or localities, taking into consideration, among other factors, the type of housing which will provide decent, safe, and sanitary dwelling for the needs of the family using the housing, the type and character of the farming operations to be conducted, and the size and earning capacity of the land.

(b) The Secretary may require any recipient of a loan or grant to agree that the availability of improvements constructed or repaired with the proceeds of the loan or grant under this subchapter shall not be a justification for directly or indirectly changing the terms or conditions of the lease or occupancy agreement with the occupants of such farms to the latter's disadvantage without the approval of the Secretary. July 15, 1949, c. 338, Title V, § 509, 63 Stat. 436.

Library references: Health ⇔7(3); C.J.S. Health § 9 et seq.

§ 1480. Administrative powers of Secretary

In carrying out the provisions of this subchapter, the Secretary shall have the power to—

Service and supply contracts

(a) make contracts for services and supplies without regard to the provisions of section 5 of Title 41, when the aggregate amount involved is less than $300;

Subordination, subrogation, and other agreements

(b) enter into subordination, subrogation, or other agreements satisfactory to the Secretary;

Compromise of claims and obligations

(c) compromise claims and obligations arising out of sections 1472–1475 of this title, inclusive, and adjust and modify the terms of mortgages, leases, contracts, and agreements entered into as circumstances may require, including the release from personal liability, without payments of further consideration, of—

(1) borrowers who have transferred their farms to other approved applicants for loans who have agreed to assume the outstanding indebtedness to the Secretary under this subchapter; and

(2) borrowers who have transferred their farms to other approved applicants for loans who have agreed to assume that portion of the outstanding indebtedness to the Secretary under this subchapter which is equal to the earning capacity value of the farm at the time of the transfer, and borrowers whose farms have been acquired by the Secretary, in cases where the Secretary determines that the original borrowers have cooperated in good faith with the Secretary, have farmed in a workmanlike manner, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to their loans, to the best of their abilities;

Collection of claims and obligations

(d) collect all claims and obligations arising out of or under any mortgage, lease, contract, or agreement entered into pursuant to this subchapter and, if in his judgment necessary and advisable, to pursue the same to final collection in any court having jurisdiction: *Provided,* That the prosecution and defense of all litigation under this subchapter shall be conducted under the supervision of the Attorney General and the legal representation shall be by the United States attorneys for the districts, respectively, in which such litigation may arise and by such other attorney or attorneys as may, under law, be designated by the Attorney General;

Purchase of pledged or mortgaged property at foreclosure or other sales; operation, sale or disposition of said property

(e) bid for and purchase at any foreclosure or other sale or otherwise to acquire the property pledged or mortgaged to secure a loan or other indebtedness owing under this subchapter, to accept title to any property so purchased or acquired, to operate or lease such property for such period as may be necessary or advisable, to protect the interest of the United States therein and to sell or otherwise dispose of the property so purchased or acquired by such terms and for such considerations as the Secretary shall determine to be reasonable and to make loans as provided herein to provide adequate farm dwellings and buildings for the purchasers of such property;

Utilization of indebtedness

(f) utilize with respect to the indebtedness arising from loans and payments made under this subchapter, all the powers and authorities given to him under sections 1150–1150b of Title 12;

Rules and regulations

(g) make such rules and regulations as he deems necessary to carry out the purposes of this subchapter. July 15, 1949, c. 338, Title V, § 510, 63 Stat. 437.

§ 1481. Issuance of notes and obligations for loan funds; amount; limitation; security; form and denomination; interest; purchase and sale by Treasury; public debt transaction

The Secretary may issue notes and other obligations for purchase by the Secretary of the Treasury for the purpose of making loans under this subchapter (other than loans under section 1474(b) or 1485 of this title). The total principal amount of such notes and obligations issued pursuant to this section during the period beginning July 1, 1956, and ending September 30, 1965, shall not exceed $850,000,000, of which $50,000,000 shall be available exclusively for assistance to elderly persons as provided in clause (3) of section 1471(a) of this title. The notes and obligations issued by the Secretary shall be secured by the obligations of borrowers and the Secretary's commitments to make contributions under this subchapter and shall be repaid from the payment of principal and interest on the obligations of the borrowers and from funds appropriated hereunder. The notes and other obligations issued by the Secretary shall be in such forms and denominations, shall have such maturities, and shall be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current av-

erage rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the notes or obligations by the Secretary. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Secretary issued hereunder and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act are extended to include any purchases of such obligations. The Secretary of the Treasury may at any time sell any of the notes or obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or obligations shall be treated as public debt transactions of the United States. July 15, 1949, c. 338, Title V, § 511, 63 Stat. 438; July 14, 1952, c. 723, § 11(a), 66 Stat. 604; June 29, 1954, c. 410, § 5(a), 68 Stat. 320; Aug. 2, 1954, c. 649, Title VIII, § 812(a), 68 Stat. 647; Aug. 11, 1955, c. 783, Title V, § 501(1), 69 Stat. 654; Aug. 7, 1956, c. 1029, Title VI, § 606(a), 70 Stat. 1114; June 30, 1961, Pub.L. 87–70, Title VIII, §§ 801(c), 802, 75 Stat. 186; Sept. 28, 1962, Pub.L. 87–723, § 4(c) (1), 76 Stat. 672; Sept. 2, 1964, Pub.L. 88–560, Title V, § 501 (a), 78 Stat. 796.

Library references: United States ⇐53(9); C.J.S. United States § 70.

Historical Note

References in Text. The Second Liberty Bond Act, as amended, referred to in subsec. (f) is classified to sections 745, 752–754b, 757, 757b–758, 760, 764–766, 769, 771, 773, 774 and 801 of Title 31, Money and Finance.

1964 Amendment. Pub.L. 88–560 substituted "September 30, 1965" for "June 30, 1965", and "$850,000,000" for "$700,000,000."

1962 Amendment. Pub.L. 87–723 substituted "1474(b) or 1485" for "1474(b)" and "$700,000,000, of which $50,000,000 shall be available exclusively for assistance to elderly persons as provided in clause (3) of section 1471(a) of this title for "$650,000,000."

1961 Amendment. Pub.L. 87–70 substituted "June 30, 1965" for "June 30, 1961", and $650,000,000" for $450,000,000."

1956 Amendment. Act Aug. 7, 1956 authorized $450,000,000 for loans for the period beginning July 1, 1956, and ending June 30, 1961.

1955 Amendment. Act Aug. 11, 1955 authorized an additional $100,000,000 on and after July 1, 1955.

1954 Amendments. Act Aug. 2, 1954, substituted "$100,000,000" for the authorization of $8,500,000 (on and after July 1, 1954) which had been inserted by Act June 29, 1954.

Act June 29, 1954 authorized an additional $8,500,000 on and after July 1, 1954.

1952 Amendment. Act July 14, 1952 authorized an additional $100,000,000 for fiscal year 1954.

Effective Date of 1956 Amendment. Section 606(d) of Act Aug. 7, 1956, provided that amendment of this section and sections 1482 and 1483 of this title shall take effect July 1, 1956.

Legislative History: For legislative history and purpose of Act July 14, 1952, see 1952 U.S.Code Cong. and Adm.News, p. 2135. See, also, Act Aug. 7, 1956, 1956 U.S.Code Cong. and Adm.News, p. 4509; Pub.L. 87–70, 1961 U.S.Code Cong. and Adm.News, p. 1923; Pub.L. 87–723, 1962 U.S.Code Cong. and Adm.News, p. 2737.

§ 1482. Contribution commitments

In connection with loans made pursuant to section 1473 of this title, the Secretary is authorized to make commitments for contributions aggregating not to exceed $10,000,000 during the period beginning July 1, 1956, and ending September 30, 1965. July 15, 1949, c. 338, Title V, § 512, 63 Stat. 438; July 14, 1952, c. 723, § 11(b), 66 Stat. 604; June 29, 1954, c. 410, § 5(b), 68 Stat. 320; Aug. 2, 1954, c. 649, Title VIII, § 812(b), 68 Stat. 647; Aug. 11, 1955, c. 783, Title V, § 501 (2), 69 Stat. 654; Aug. 7, 1956, c. 1029, Title VI, § 606(b), 70 Stat. 1114; June 30, 1961, Pub.L. 87–70, Title VIII, § 801(c), 75 Stat. 186; Sept. 2, 1964, Pub.L. 88–560, Title V, § 501(b), 78 Stat. 796.

Historical Note

1964 Amendment. Pub.L. 88–560 substituted "September 30, 1965" for "June 30, 1965."

1961 Amendment. Pub.L. 87–70 substituted "June 30, 1965" for "June 30, 1961."

1956 Amendment. Act Aug. 7, 1956 authorized commitments for contributions not to exceed $10,000,000 from July 1, 1956 to June 30, 1961.

1955 Amendment. Act Aug. 11, 1955 authorized an additional $2,000,000 on and after July 1, 1955.

1954 Amendments. Act Aug. 2, 1954 substituted "$2,000,000" for the authorization of $170,000 (available July 1, 1954) which had been inserted by Act June 29, 1954.

Act June 29, 1954 provided an additional authorization available July 1, 1954.

1952 Amendment. Act July 14, 1952 provided an additional authorization available July 1, 1953.

Effective Date of 1956 Amendment. Amendment of this section effective July 1, 1956, see note set out under section 1481 of this title.

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923.

§ 1483. Appropriations

There is authorized to be appropriated to the Secretary (a) such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to (i) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title, and (ii) the interest due on a similar sum represented by notes or other obligations issued by the Secretary; (b) not to exceed $50,000,000 for grants pursuant to section 1474(a) of this title and loans pursuant to section 1474(b) of this title during the period beginning July 1, 1956, and ending September 30, 1965; (c) not to exceed $10,000,000 for financial assistance pursuant to section 1486 of this title for the period ending September 30, 1965; (d) not to exceed $250,000 per year for research and study programs pursuant to subsections (b), (c), and (d) of section 1476 of this title during the period beginning July 1, 1961, and ending September 30, 1965; and (e) such further sums as may be necessary to enable the Secretary to carry out the provisions of this subchapter. July 15, 1949, c. 338, Title V, § 513, 63 Stat. 438; July 14, 1952, c. 723, § 11(c), 66 Stat. 604; June 29, 1954, c. 410, § 5(c), 68 Stat. 320; Aug. 2, 1954,

c. 649, Title VIII, § 812(c), 68 Stat. 647; Aug. 11, 1955, c. 783, Title V, § 501(3), 69 Stat. 654; Aug. 7, 1956, c. 1029, Title VI, § 606(c), 70 Stat. 1115; June 30, 1961, Pub.L. 87–70, Title VIII, §§ 801(c), 805(b), 75 Stat. 186, 188; Sept. 2, 1964, Pub.L. 88–560, Title V, §§ 501(c), 503(b), 78 Stat. 796, 798.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

1964 Amendment. Pub.L. 88–560 substituted "September 30, 1965" for "June 30, 1965" wherever appearing, redesignated clauses (c) and (d) as (d) and (e), and added clause (c).

1961 Amendment. Pub.L. 87–70 extended the period for grants and loans pursuant to section 1474(a), (b) of this title from June 30, 1961 to June 30, 1965, and authorized appropriations of not more than $250,000 per year for research and study programs pursuant to subsections (b), (c), and (d) of section 1476 of this title for the period beginning July 1, 1961, and ending June 30, 1965.

1956 Amendment. Act Aug. 7, 1956 authorized $50,000,000 for grants and loans from July 1, 1956 to June 30, 1961.

1955 Amendment. Act Aug. 11, 1955 authorized an additional $10,000,000 on July 1, 1955.

1954 Amendments. Act Aug. 2, 1954 substituted "$10,000,000" for the authorization of $850,000 (available July 1, 1954) which had been authorized by Act June 29, 1954.

Act June 29, 1954 authorized an appropriation of $850,000 to be available on July 1, 1954.

1952 Amendment. Act July 14, 1952 authorized an appropriation of $10,000,000 to be available on July 1, 1953.

Effective Date of 1956 Amendment. Amendment of this section effective July 1, 1956, see note set out under section 1481 of this title.

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923.

§ 1484. Insurance of loans for housing and related facilities for domestic farm labor—Authorization; terms and conditions

(a) The Secretary is authorized to insure and make commitments to insure loans made by lenders other than the United States to the owner of any farm, any association of farmers, any State or political subdivision thereof, or any public or private nonprofit organization for the purpose of providing housing and related facilities for domestic farm labor in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

(1) no such loan shall be insured in an amount in excess of the value of the farm involved less any prior liens in the case of a loan to an individual owner of a farm, or the total estimated value of the structures and facilities with respect to which the loan is made in the case of any other loan;

(2) no such loan shall be insured if it bears interest at a rate in excess of 5 per centum per annum;

(3) out of interest payments by the borrower the Secretary shall retain a charge in an amount not less than one-half of 1

per centum per annum of the unpaid principal balance of the loan;

(4) the insurance contracts and agreements with respect to any loan may contain provisions for servicing the loan by the Secretary or by the lender, and for the purchase by the Secretary of the loan if it is not in default, on such terms and conditions as the Secretary may prescribe; and

(5) the Secretary may take mortgages creating a lien running to the United States for the benefit of the insurance fund referred to in subsection (b) of this section notwithstanding the fact that the note may be held by the lender or his assignee.

Utilization of farm tenant mortgage insurance fund; additions to and deposits in fund; deposits in Treasury

(b) The Secretary shall utilize the insurance fund created by section 1005a of Title 7 and the provisions of section 1005c(a), (b), and (c) of Title 7 to discharge obligations under insurance contracts made pursuant to this section, and

(1) the Secretary may utilize the insurance fund to pay taxes, insurance, prior liens, and other expenses to protect the security for loans which have been insured hereunder and to acquire such security property at foreclosure sale or otherwise;

(2) the notes and security therefor acquired by the Secretary under insurance contracts made pursuant to this section shall become a part of the insurance fund. Loans insured under this section may be held in the fund and collected in accordance with their terms or may be sold and reinsured. All proceeds from such collections, including the liquidation of security and the proceeds of sales, shall become a part of the insurance fund; and

(3) of the charges retained by the Secretary out of interest payments by the borrower, amounts not less than one-half of 1 per centum per annum of the unpaid principal balance of the loan shall be deposited in and become a part of the insurance fund. The remainder of such charges shall be deposited in the Treasury of the United States and shall be available for administrative expenses of the Farmers Home Administration, to be transferred annually to and become merged with any appropriation for such expenses.

Insurance contract; obligation of the United States; incontestability

(c) Any contract of insurance executed by the Secretary under this section shall be an obligation of the United States and incontestable except for fraud or misrepresentation of which the holder of the contract has actual knowledge.

Maximum obligations

(d) The aggregate amount of the principal obligations of the loans insured under this section shall not exceed $25,000,000 in any one fiscal year.

Administrative expenses

(e) Amounts made available pursuant to section 1483 of this title shall be available for administrative expenses incurred under this section.

Definitions

(f) As used in this section—

(1) the term "housing" means (A) new structures suitable for dwelling use by domestic farm labor, and (B), existing structures which can be made suitable for dwelling use by domestic farm labor by rehabilitation, alteration, conversion, or improvement; and

(2) the term "related facilities" means (A) new structures suitable for use as dining halls, community rooms or buildings, or infirmaries, or for other essential services facilities, and (B) existing structures which can be made suitable for the above uses by rehabilitation, alteration, conversion, or improvement; and

(3) the term "domestic farm labor" means persons who receive a substantial portion (as determined by the Secretary) of their income as laborers on farms situated in the United States and either (A) are citizens of the United States or (B) reside in the United States after being legally admitted for permanent residence therein.

July 15, 1949, c. 338, Title V, § 514, as added June 30, 1961, Pub.L. 87–70, Title VIII, § 804(a), 75 Stat. 186, and amended Sept. 2, 1964, Pub.L. 88–560, Title V, § 502, 78 Stat. 796.

Library references: United States ⇐53(9); C.J.S. United States § 70.

Historical Note

References in Text. Section 1005a of Title 7 and section 1005c(a), (b), and (c) of Title 7, referred to in subsec. (b), were repealed by section 341(a) of Pub. L. 87–128, Title III, Aug. 8, 1961, 75 Stat. 318 (set out as a note under section 1921 of Title 7, Agriculture), which also provides that references in other laws to the Bankhead-Jones Farm Tenant Act shall be construed as referring to appropriate provisions of chapter 50 of Title 7. See chapter 50 and particularly section 1929 of Title 7.

1964 Amendment. Subsec. (f) (3). Pub. L. 88–560 included residents of the United States after being legally admitted for permanent residence.

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923.

Cross References

Agricultural Credit Insurance Fund as designation for farm tenant insurance fund, see section 1929 of Title 7, Agriculture.

§ 1485. Housing and related facilities for elderly persons and families—Direct loans; authorization; terms and conditions; revolving fund; appropriation

(a) The Secretary is authorized to make loans to private nonprofit corporations and consumer cooperatives to provide rental housing and related facilities for elderly persons and elderly families of low or moderate income in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

(1) no such loan shall exceed the development cost or the value of the security, whichever is less;

(2) such loans shall bear interest at rates determined by the Secretary, not to exceed the maximum rate provided in section 1701q(a) (3) of Title 12; and

(3) such a loan may be made for a period of up to fifty years from the making of the loan.

There is authorized to be appropriated not to exceed $50,000,000, which shall constitute a revolving fund to be used by the Secretary in carrying out this subsection.

Insurance of loans; authorization; terms and conditions; utilization of Agricultural Credit Insurance Fund; expiration date

(b) The Secretary is authorized to insure and make commitments to insure loans made to any individual, corporation, association, trust, or partnership to provide rental housing and related facilities for elderly persons and elderly families in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

(1) no such loan shall exceed $300,000 or the development cost or the value of the security, whichever is least;

(2) such loans shall bear interest at rates determined by the Secretary, not to exceed the maximum rate provided in section 1709(b) (5) of Title 12;

(3) provide for complete amortization by periodic payments within such term as the Secretary may prescribe;

(4) for insuring such loans, the Secretary shall utilize the Agricultural Credit Insurance Fund subject to all the provisions of section 1929 of Title 7 and the second and third sentences of section 1928 of Title 7, including the authority in section 1929 (f) (1) of Title 7 to utilize the insurance fund to make, sell, and insure loans which could be insured under this subsection; but the aggregate of the principal amounts of such loans made by the Secretary and not disposed of shall not exceed $10,000,000 outstanding at any one time; and the Secretary may take liens

running to the United States though the notes may be held by other lenders; and

(5) no loan shall be insured under this subsection after September 30, 1965.

Construction requirements

(c) No loan shall be made or insured under subsection (a) or (b) of this section unless the Secretary finds that the construction involved will be undertaken in an economical manner and will not be of elaborate or extravagant design or materials.

Definitions

(d) As used in this section—

(1) the term "housing" means new or existing housing suitable for dwelling use by elderly persons or elderly families;

(2) the term "related facilities" includes cafeterias or dining halls, community rooms or buildings, appropriate recreation facilities, and other essential service facilities;

(3) the term "elderly persons" means persons who are 62 years of age or over; and the term "elderly families" means families the head of which (or his spouse) is 62 years of age or over; and

(4) the term "development cost" means the cost of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities and purchasing and improving the necessary land, including necessary and appropriate fees and charges approved by the Secretary.

Administrative expenses

(e) Amounts made available pursuant to section 1483 of this title shall be available for administrative expenses incurred under this section. July 15, 1949, c. 338, Title V, § 515, as added Sept. 28, 1962, Pub.L. 87–723, § 4(b), 76 Stat. 671, and amended June 30, 1964, Pub. L. 88–340, 78 Stat. 233; Sept. 2, 1964, Pub.L. 88–560, Title V, § 501(d), 78 Stat. 796.

Historical Note

1964 Amendments. Subsec. (b). Pub.L. 88–560 substituted "$300,000" for "$100,000" in cl. (1), and "1965" for "1964" in cl. (5).

Pub.L. 88–340 substituted "September 30, 1964" for "June 30, 1964" in cl. (5).

Legislative History: For legislative history and purpose of Pub.L. 87–723, see 1962 U.S.Code Cong. and Adm.News, p. 2737; Pub.L. 88–340, 1964 U.S.Code Cong. and Adm.News.

§ 1486. Financial assistance to provide low-rent housing for domestic farm labor—Application; considerations

(a) Upon the application of any State or political subdivision thereof, or any public or private nonprofit organization, the Secretary

is authorized to provide financial assistance for the provision of low-rent housing and related facilities for domestic farm labor, if he finds that—

(1) the housing and related facilities for which financial assistance is requested will fulfill a pressing need in the area in which such housing and facilities will be located, and there is reasonable doubt that the same can be provided without financial assistance under this section;

(2) the applicant will contribute, from its own resources or from funds borrowed under section 1484 of this title or elsewhere, at least one-third of the total development cost;

(3) the types of housing and related facilities to be provided are most practical, giving due consideration to the purposes to be served thereby and the needs of the occupants thereof; and

(4) the construction will be undertaken in an economical manner, and the housing and related facilities will not be of elaborate or extravagant design or material.

Maximum amount of assistance

(b) The amount of any financial assistance provided under this section for low-rent housing and related facilities shall not exceed two-thirds of the total development cost thereof, as determined by the Secretary, less such amount as the Secretary determines can be practicably obtained from other sources (including a loan under section 1484 of this title).

Prerequisite agreements; rentals; safety and sanitation standards; priority of domestic farm labor

(c) No financial assistance for low-rent housing and related facilities shall be made available under this section unless, to any extent and for any periods required by the Secretary, the applicant agrees—

(1) that the rentals charged domestic farm labor shall not exceed such amounts as may be approved by the Secretary, giving due consideration to the income and earning capacity of the tenants, and the necessary costs of operating and maintaining such housing;

(2) that such housing shall be maintained at all times in a safe and sanitary condition in accordance with such standards as may be prescribed by State or local law, or, in the absence of such standards, in accordance with such minimum requirements as the Secretary shall prescribe; and

(3) an absolute priority will be given at all times in granting occupancy of such housing and facilities to domestic farm labor.

Payments; contracts to specify uses of housing

(d) The Secretary may make payments pursuant to any contract for financial assistance under this section at such times and in such manner as may be specified in the contract. In each contract, the

Secretary shall include such covenants, conditions, or provisions as he deems necessary to insure that the housing and related facilities, for which financial assistance is made available, be used only in conformity with the provisions of this section.

Regulations for prevention of waste

(e) The Secretary shall prescribe regulations to insure that Federal funds expended under this section are not wasted or dissipated.

Wages; labor standards; waiver; authority and functions of Secretary

(f) All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary which are undertaken by approved applicants under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary shall not extend any financial assistance under this section for any project without first obtaining adequate assurance that these labor standards will be maintained on the construction work; except that compliance with such standards may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the person, corporation, association, organization, or other entity undertaking the project. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950, and section 276c of Title 40.

Definitions

(g) As used in this section—

(1) the term "low-rent housing" means rental housing within the financial reach of families of low income consisting of (A) new structures suitable for dwelling use by domestic farm labor, and (B) existing structures which can be made suitable for dwelling use by domestic farm labor by rehabilitation, alteration, conversion, or improvement;

(2) the terms "related facilities" and "domestic farm labor" shall have the meaning assigned to them in section 1484(f) of this title; and

(3) the term "development cost" shall have the meaning assigned to it in section 1485(d) (4) of this title.

July 15, 1949, c. 338, Title V, § 516, as added Sept. 2, 1964, Pub.L. 88–560, Title V, § 503(a), 78 Stat. 796.

Historical Note

References in Text. The Davis-Bacon Act, as amended, referred to in subsec. (f), is classified to sections 276a to 276a–5 of Title 40, Public Buildings, Property and Works.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (f), is set out as a note under section 133z–15 of Title 5, Executive Departments and Government Officers and Employees.

CHAPTER 8B.—PUBLIC WORKS OR FACILITIES

Sec.

§ 1491. Declaration of policy

It has been the policy of the Congress to assist wherever possible the States and their political subdivisions, and Indian tribes to provide the services and facilities essential to the health and welfare of the people of the United States.

The Congress finds that in many instances municipalities, or other political subdivisions of States, and Indian tribes, which seek to provide essential public works or facilities (including mass transportation facilities and equipment), are unable to raise the necessary funds at reasonable interest rates.

It is the purpose of this chapter (subject to the limitations contained herein) to authorize the extension of credit to assist in the provision of certain essential public works or facilities by States, municipalities, or other political subdivisions of States, and Indian tribes, where such credit is not otherwise available on reasonable terms and conditions. Aug. 11, 1955, c. 783, Title II, § 201, 69 Stat.

642; June 30, 1961, Pub.L. 87–70, Title V, § 501(a), 75 Stat. 173; Oct. 15, 1962, Pub.L. 87–808, § 1, 76 Stat. 920.

Library references: Health ⇐20; C.J.S. Health §§ 2, 9 et seq.

Historical Note

1962 Amendment. Pub.L. 87–808 inserted "and Indian tribes" in three places.

1961 Amendment. Pub.L. 87–70 inserted phrases "(including mass transportation facilities and equipment)" in the second par., and "(subject to the limitations contained herein)" in the third par.

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923; Pub.L. 87–808, 1962 U.S.Code Cong. and Adm.News, p. 3172.

§ 1492. Public projects—Purchase of securities or obligations; loans; payment of operating expenses

(a) The Housing and Home Finance Administrator is authorized (1) to purchase the securities and obligations of, or make loans to, municipalities and other political subdivisions and instrumentalities of one or more States (including public agencies and instrumentalities of one or more municipalities or other political subdivisions of one or more States), and Indian tribes to finance specific projects for public works or facilities under State, municipal, or other applicable law, and (2) to purchase the securities and obligations of, or make loans to, States, municipalities and other political subdivisions of States, public agencies and instrumentalities of one or more States, municipalities and political subdivisions of States, and public corporations, boards, and commissions established under the laws of any State, to finance the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service in urban areas, and for use in coordinating highway, bus, surface-rail, underground, parking and other transportation facilities in such areas. The facilities and equipment referred to in clause (2) may include land, but not public highways, and any other real or personal property needed for an economic, efficient, and coordinated mass transportation system. No such purchase or loan shall be made for payment of ordinary governmental or non-project operating expenses.

Restrictions and limitations; interest

(b) The powers granted in subsection (a) of this section shall be subject to the following restrictions and limitations:

(1) No financial assistance shall be extended under this section unless the financial assistance applied for is not otherwise available on reasonable terms, and all securities and obligations purchased and all loans made under this section shall be of such sound value or so secured as reasonably to assure retirement or repayment, and such loans may be made either directly or in cooperation with banks or

other lending institutions through agreements to participate or by the purchase of participations or otherwise.

(2) No securities or obligations shall be purchased, and no loans shall be made, including renewals or extensions thereof, which have maturity dates in excess of forty years. Subject to such maximum maturity, the Administrator in his discretion may provide for the postponement of the payment of interest on not more than 50 per centum of any financial assistance extended to an applicant under this section for a period up to ten years where (A) such assistance does not exceed 50 per centum of the development cost of the project involved, and (B) it is determined by the Administrator that such applicant will experience above-average population growth and the project would contribute to orderly community development, economy, and efficiency; and any amounts so postponed shall be payable with interest in annual installments during the remaining maturity of such assistance.

(3) Financial assistance extended under this section shall bear interest at a rate determined by the Administrator which shall be not more than the higher of (A) 3 per centum per annum, or (B) the total of one-half of 1 per centum per annum added to the rate of interest paid by the Administrator on funds obtained from the Secretary of the Treasury as provided in section 1493(a) of this title.

(4) No financial assistance shall be extended under clause (1) of subsection (a) of this section (A) to any municipality or other political subdivision having a population of fifty thousand or more (one hundred fifty thousand or more in the case of a community situated in an area designated as a redevelopment area under section 2504 of this title, or in the case of a community in or near which is located a research or development installation of the National Aeronautics and Space Administration) according to the most recent decennial census, or; (B) to any public agency or instrumentality serving one or more municipalities, political subdivisions, or unincorporated areas in one or more States, unless each municipality, political subdivision, or unincorporated area to be served by the specific public work or facility for which assistance is sought under this section has a population less than the applicable figure under clause (A) according to such census. This paragraph shall not apply to any financial assistance to be extended under subsection (a) of this section for the purpose of financing any project for public works or facilities to be initiated or accelerated as the result of a grant-in-aid from an allocation made by the President under section 2642 of this title.

Priority to applications of smaller municipalities

(c) In the processing of applications for financial assistance under clause (1) of subsection (a) of this section the Administrator shall give priority to applications of smaller municipalities for assistance in the construction of basic public works (including works

for the storage, treatment, purification, or distribution of water; sewage, sewage treatment, and sewer facilities, and gas distribution systems) for which there is an urgent and vital public need. As used in this section, a "smaller municipality" means an incorporated or unincorporated town, or other political subdivision of a State, which had a population of less than ten thousand inhabitants at the time of the last Federal census, or an Indian tribe.

Loans for transportation facilities or equipment; termination date

(d) No loans may be made for transportation facilities or equipment, pursuant to clause (2) of subsection (a) of this section, unless the Administrator determines (1) that there is being actively developed (or has been developed) for the urban or other metropolitan area served by the applicant a program, meeting criteria established by him, for the development of a comprehensive and coordinated mass transportation system; (2) that the proposed facilities or equipment can reasonably be expected to be required for such a system; and (3) if such program has not been completed, that there is an urgent need for the provision of the facilities or equipment to be commenced prior to the time that the program could reasonably be expected to be completed: *Provided*, That no such loan shall be made, except under a prior commitment, after June 30, 1963.

Grants-in-aid to public entities to accelerate public works; restrictions and limitations

(e) The Administrator is authorized to make a grant-in-aid from any allocation made for such purpose by the President under section 2642 of this title to any public entity described in clause (1) of subsection (a) of this section of not to exceed 50 per centum of the cost of construction of any project for public works or facilities, if such project would be eligible (without regard to the restrictions and limitations of subsections (b) and (c) of this section) for financial assistance under clause (1) of subsection (a) of this section in accordance with the rules and regulations of the Administrator (as in effect on September 14, 1962) relating to the types of public works and facilities to which such assistance may be extended. Aug. 11, 1955, c. 783, Title II, § 202, 69 Stat. 643; June 30, 1961, Pub.L. 87–70, Title V, § 501(b)–(d) (1), (e)–(g), 75 Stat. 173, 174; Sept. 5, 1962, Pub.L. 87–634, 76 Stat. 435; Sept. 14, 1962, Pub.L. 87–658, § 5, 76 Stat. 543; Oct. 15, 1962, Pub.L. 87–808, § 2, 76 Stat. 920; Oct. 15, 1962, Pub.L. 87–809, 76 Stat. 920; Sept. 2, 1964, Pub.L. 88–560, Title VI, § 601, 78 Stat. 798.

Library references: United States ⇨82; C.J.S. United States § 122.

Historical Note

References in Text. Section 2642 of this title, referred to in subsecs. (b) (4) and (e) was, in the original, "section 9 of the Public Works Acceleration Act." As introduced in the Senate on May 28, 1962, S. 2965 contained a section 9, however, subsequent amendments to S. 2965 prior to its enactment as Pub.L. 87-658 eliminated section 9 from the bill. Provisions in section 3 of Pub.L. 87-658 seem to be identical to those contained in section 9 of the original bill, and therefore, for purposes of classification, "section 9 of the Public Works Acceleration Act" has

been translated as "section 2642 of this title", since this appears to be the intent of Congress.

1964 Amendment. Subsec. (a). Pub.L. 88-560, § 601(a), substituted "instrumentalities of one or more States" for "instrumentalities of States", and "of one or more States" for "in the same State."

Subsec. (b) (4). Pub.L. 88-560, § 601 (b), inserted "(A)" preceding "to any municipality", and substituted "2504 of this title" for "2504(a) of this title", and " ; (B) to any public agency or instrumentality serving one or more municipalities, political subdivisions, or unincorporated areas in one or more States, unless each municipality, political subdivision, or unincorporated area to be served by the specific public work or facility for which assistance is sought under this section has a population less than the applicable figure under clause (A) according to such census" for, " , or to any public agency or instrumentality of one or more municipalities or other political subdivisions having a population (or an aggregate population) equal to or exceeding that figure according to such census. This paragraph shall not apply to any financial assistance to be extended under subsection (a) of this section for the purpose of financing any project for public works or facilities to be initiated or accelerated as the result of a grant-in-aid from an allocation made by the President under section 2642 of this title."

1962 Amendments. Subsec. (a). Pub.L. 87-808 inserted "and Indian tribes."

Subsec. (b) (4). Pub.L. 87-658, § 5(a), provided that par. (4) shall not apply to assistance under subsec. (a) of this section for the purpose of financing any project to be started or accelerated as a result of a grant-in-aid under section 2642 of this title.

Pub.L. 87-634 prohibited financial assistance under subsec. (a) (1) of this section to a community with a population of 150,000 or more in or near which is located a research or development installation of the National Aeronautics and Space Administration.

Subsec. (c). Pub.L. 87-808 inserted "., or an Indian tribe."

Subsec. (d). Pub.L. 87-809 substituted "June 30, 1963" for "December 31, 1962."

Subsec. (e). Pub.L. 87-658, § 5(b), added subsec. (e).

1961 Amendment. Subsec. (a). Pub.L. 87-70, § 501(b), eliminated provisions which required the Administrator to act through the Community Facilities Administration, inserted cl. (1), substituted "to finance the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service in urban areas, and for use in coordinating highway, bus, surface-rail, underground, parking and other transportation facilities in such area" for "to finance specific public projects under State or municipal law" in cl. (2), and inserted sentence which authorize facilities and equipment referred to in cl. (2) to include land, but not public highways, and any other real or personal property needed for an economic, efficient, and coordinated mass transportation system.

Subsec. (b) (2). Pub.L. 87-70, § 501(c), empowered the Administrator, subject to the maximum maturity, to provide for the postponement of the payment of interest on not more than 50 per centum of any financial assistance under this section for a period up to ten years where such assistance does not exceed 50 per centum of the development cost and it is determined that the applicant will experience above-average population growth and the project would contribute to orderly community development, economy, and efficiency.

Subsec. (b) (3). Pub.L. 87-70, § 501(d) (1), added subsec. (b) (3).

Subsec. (b) (4). Pub.L. 87-70, § 501(e), added subsec. (b) (4).

Subsec. (c). Pub.L. 87-70, § 501(f), substituted "under clause (1) of subsection (a) of this section" for "under this section."

Subsec. (d). Pub.L. 87-70, § 501(g), added subsec. (d).

Legislative History: For legislative history and purpose of Pub.L. 87-70, see 1961 U.S.Code Cong. and Adm.News, p. 1923. See, also, Pub.L. 87-634, 1962 U.S. Code Cong. and Adm.News, p. 2342; Pub.L. 87-658, 1962 U.S.Code Cong. and Adm.News, p. 2509.

§ 1493. Notes and obligations; forms and denominations; maturities; terms and conditions; interest rate; revolving fund

(a) In order to finance activities under this chapter, the Administrator is authorized and empowered to issue to the Secretary of the Treasury, from time to time and to have outstanding at any one time, notes and other obligations in an amount not to exceed $650,000,000: *Provided*, That, of the funds obtained through the issuance of such notes and other obligations, $600,000,000 shall be available only for purchases and loans pursuant to clause (1) of section 1492(a) of this title and $50,000,000 shall be available only for purchases and loans pursuant to clause (2) of such section. Such obligations shall be in such forms and denominations, have such maturities and be subject to such terms and conditions as may be prescribed by the Administrator, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury which shall be not more than the higher of (1) 2½ per centum per annum, or (2) the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the issuance by the Administrator and adjusted to the nearest one-eighth of 1 per centum. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Administrator to be issued hereunder and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(b) Funds borrowed under this section and any proceeds shall constitute a revolving fund which may be used by the Administrator in the exercise of his functions under this chapter. Aug. 11, 1955, c. 783, Title II, § 203, 69 Stat. 643; Sept. 14, 1960, Pub.L. 86–788, § 2(c), 74 Stat. 1028; June 30, 1961, Pub.L. 87–70, § 501(d) (2), (h), (j), 75 Stat. 174, 175.

Library references: United States ⇨89; C.J.S. United States §§ 145, 148, 149.

Historical Note

References in Text. The Second Liberty Bond Act, as amended, referred to in subsec. (a), is classified to sections 745, 752–754b, 757, 757b–758, 760, 764–766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

1961 Amendment. Subsec. (a). Pub.L. 87–70, § 501(d) (2), (h), increased the maximum amount of notes and other obligations that may be outstanding at any one time from $150,000,000 to $650,000,000, restricted use of $600,000,000 for purchases

and loans pursuant to cl. (1) of section 1492(a) of this title and $50,000,000 for purchases and loans pursuant to cl. (2) of such section, and substituted "a rate determined by the Secretary of the Treasury which shall be not more than the higher of (1) 2½ per centum per annum, or (2) the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the issuance by the Administrator and adjusted to the nearest one-eighth of 1 per centum" for "a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States of comparable maturities as of the last day of the month preceding the issuance of such notes or other obligations."

Subsec. (b). Pub.L. 87-70, § 501(j), substituted "which may be used" for "which may used."

1960 Amendment. Subsec. (a). Pub.L. 86-788 substituted "150,000,000" for "100,000,000."

Legislative History: For legislative history and purpose of Pub.L. 87-70, see 1961 U.S.Code Cong. and Adm.News, p. 1923.

§ 1494. Functions, powers and duties of Administrator; administrative expenses

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter the Administrator shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in section 1749a of Title 12, except subsection (c) (2) of such section. Funds obtained or held by the Administrator in connection with the performance of his functions under this chapter shall be available for the administrative expenses of the Administrator in connection with the performance of such functions. Aug. 11, 1955, c. 783, Title II, § 204, 69 Stat. 644.

Library references: United States ⇐40; C.J.S. United States §§ 38-40.

§ 1495. Termination of authority to make loans under Reconstruction Finance Corporation Liquidation Act

No loans shall be made under section 459 of Title 40 after August 11, 1955, except pursuant to an application for such loan filed prior to such date. Aug. 11, 1955, c. 783, Title II, § 205, 69 Stat. 644.

§ 1496. Definition of "States"

As used in this chapter, the term "States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States. Aug. 11, 1955, c. 783, Title II, § 206, as added Aug. 7, 1956, c. 1029, Title VI, § 603, 70 Stat. 1114.

Historical Note

Legislative History: For legislative history and purpose of Act Aug. 7, 1956, see 1956 U.S.Code Cong. and Adm.News, p. 4509.

§ 1497. Technical advisory services in budgeting, financing, planning and construction of community facilities; appropriations

The Administrator is authorized to establish technical advisory services to assist municipalities and other political subdivisions and instrumentalities, and Indian tribes in the budgeting, financing, planning, and construction of community facilities. There are authorized to be appropriated such sums as may be necessary, together with any fees that may be charged, to cover the cost of such services. Aug. 11, 1955, c. 783, Title II, § 207, as added June 30, 1961, Pub.L. 87–70, Title V, § 501(i), 75 Stat. 175, and amended Oct. 15, 1962, Pub.L. 87–808, § 3, 76 Stat. 920.

Historical Note

1962 Amendment. Pub.L. 87–808 inserted ", and Indian tribes."

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923. See, also, Pub.L. 87–808, 1962 U.S. Code Cong. and Adm.News, p. 3172.

CHAPTER 8C.—PRESERVATION OF OPEN-SPACE LAND

Sec.

§ 1500. Congressional declaration of findings and purpose

(a) The Congress finds that a combination of economic, social, governmental, and technological forces have caused a rapid expansion of the Nation's urban areas, which has created critical problems of service and finance for all levels of government and which, combined with a rapid population growth in such areas, threatens severe problems of urban and suburban living, including the loss of valuable open-space land in such areas, for the preponderant majority of the Nation's present and future population.

(b) It is the purpose of this chapter to help curb urban sprawl and prevent the spread of urban blight and deterioration, to encourage more economic and desirable urban development, and to help provide necessary recreational, conservation, and scenic areas by assisting State and local governments in taking prompt action to preserve open-space land which is essential to the proper long-range development and welfare of the Nation's urban areas, in accordance with plans for the allocation of such land for open-space purposes. Pub.L. 87–70, Title VII, § 701, June 30, 1961, 75 Stat. 183.

Library references: Public Service Commissions ⇐7; C.J.S. Public Utilities §§ 13 et seq., 41.

Historical Note

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923.

§ 1500a. Grants to States and local public bodies—Authorization; limitation on amount of grant; full faith and credit

(a) In order to encourage and assist in the timely acquisition of land to be used as permanent open-space land, as defined herein, the Housing and Home Finance Administrator (hereinafter referred to as the "Administrator") is authorized to enter into contracts to make grants to States and local public bodies acceptable to the Administrator as capable of carrying out the provisions of this chapter to help finance the acquisition of title to, or other permanent interests in, such land. The amount of any such grant shall not exceed 20 per centum of the total cost, as approved by the Administrator, of acquiring such interests: *Provided*, That this limitation may be increased to not to exceed 30 per centum in the case of a grant extended to a public body which (1) exercises responsibilities consistent with the purposes of this chapter for an urban area as a whole, or (2) exercises or participates in the exercise of such responsibilities for all or a substantial portion of an urban area pursuant to an interstate or other intergovernmental compact or agreement. The faith of the United States is pledged to the payment of all grants contracted for under this chapter.

Aggregate amount of contracts; appropriations

(b) The Administrator may enter into contracts to make grants under this chapter aggregating not to exceed $75,000,000. There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, the amounts necessary to provide for the payment of such grants as well as to carry out all other purposes of this chapter. All funds so appropriated shall remain available until expended.

Restrictions on use of grants

(c) No grants under this chapter shall be used to defray development costs or ordinary State or local governmental expenses, or to help finance the acquisition by a public body of land located outside the urban area for which it exercises (or participates in the exercise of) responsibilities consistent with the purpose of this chapter.

Determination of further terms and conditions for assistance

(d) The Administrator may set such further terms and conditions for assistance under this chapter as he determines to be desirable.

Review of applications; consultation with Secretary of the Interior; exchange of information

(e) The Administrator shall consult with the Secretary of the Interior on the general policies to be followed in reviewing applications for grants. To assist the Administrator in such review, the Secretary of the Interior shall furnish him appropriate information on the status of recreational planning for the areas to be served by the open-space land acquired with the grants. The Administrator shall provide current information to the Secretary from time to time on significant program developments. Pub.L. 87–70, Title VII, § 702, June 30, 1961, 75 Stat. 184; Pub.L. 88–560, Title X, § 1001, Sept. 2, 1964, 78 Stat. 806.

Library references: United States ⇐82; C.J.S. United States § 122.

Historical Note

1964 Amendment. Subsec. (b). Pub.L. 88-560 substituted "$75,000,000" for "$50,000,000", and inserted "All funds so appropriated shall remain available until expended."

§ 1500b. Planning requirements

(a) The Administrator shall enter into contracts to make grants for the acquisition of land under this chapter only if he finds that (1) the proposed use of the land for permanent open space is important to the execution of a comprehensive plan for the urban area meeting criteria he has established for such plans, and (2) a program of comprehensive planning (as defined in section 461(d) of Title 40) is being actively carried on for the urban area.

(b) In extending financial assistance under this chapter, the Administrator shall take such action as he deems appropriate to assure that local governing bodies are preserving a maximum of open-space land, with a minimum of cost, through the use of existing public land; the use of special tax, zoning, and subdivision provisions; and the continuation of appropriate private use of open-space land through acquisition and leaseback, the acquisition of restrictive easements, and other available means. Pub.L. 87–70, Title VII, § 703, June 30, 1961, 75 Stat. 184.

§ 1500c. Conversions to other uses

No open-space land for which a grant has been made under this chapter shall, without the approval of the Administrator, be converted to uses other than those originally approved by him. The Administrator shall approve no conversion of land from open-space use unless he finds that such conversion is essential to the orderly development and growth of the urban area involved and is in accord with the then applicable comprehensive plan, meeting criteria established by him. The Administrator shall approve any such conversion only upon such conditions as he deems necessary to assure the substitution of other open-space land of at least equal fair market value and of as nearly as feasible equivalent usefulness and location. Pub.L. 87–70, Title VII, § 704, June 30, 1961, 75 Stat. 185.

§ 1500d. Technical assistance, studies, and publication of information

In order to carry out the purpose of this chapter the Administrator is authorized to provide technical assistance to State and local public bodies and to undertake such studies and publish such information, either directly or by contract, as he shall determine to be desirable. There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such amounts as may be necessary to provide for such assistance, studies, and publication. Nothing contained in this section shall limit any authority of the Administrator under any other provision of law. Pub.L. 87–70, Title VII, § 705, June 30, 1961, 75 Stat. 185.

§ 1500e. Definitions

As used in this chapter—

(1) The term "open-space land" means any undeveloped or predominantly undeveloped land in an urban area which has value for (A) park and recreational purposes, (B) conservation of land and other natural resources, or (C) historic or scenic purposes.

(2) The term "urban area" means any area which is urban in character, including those surrounding areas which, in the judgment of the Administrator, form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

(3) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam. Pub.L. 87–70, Title VII, § 706, June 30, 1961, 75 Stat. 185.

CHAPTER 9.—HOUSING OF PERSONS ENGAGED IN NATIONAL DEFENSE

SUBCHAPTER I.—PROJECTS GENERALLY

SUBCHAPTER II.—DEFENSE HOUSING

SUBCHAPTER III.—DEFENSE PUBLIC WORKS

SUBCHAPTER IV.—GENERAL PROVISIONS AFFECTING SUBCHAPTERS II–VII

Sec.

SUBCHAPTER I.—PROJECTS GENERALLY

Cross References

Provisions to expedite defense housing, see sections 1521 et seq., and 1541 et seq. of this title.

§ 1501. Cooperation between departments; definitions; limitation of projects

In connection with the national defense program, the Departments of the Navy, Army, and Air Force and the Public Housing Administration are authorized to cooperate in making necessary housing available for persons engaged in national defense activities, as provided in this subchapter. "Persons engaged in national defense activities" (as that term is used in this subchapter) shall include (i) enlisted men with families, who are in the naval and military service and officers of the Army, Air Force, and Marine Corps not above the grade of captain, and officers of the Navy and Coast Guard, not above the grade of lieutenant and employees of the Departments of the Navy, Army, and Air Force who are assigned to duty at naval or military reservations, posts, or bases, and (ii) workers with families, who are engaged or to be engaged in industries connected with and essential to the national defense program. No project shall be developed or assisted for the purposes of this subchapter except with the approval of the President and upon a determination by him that there is an acute shortage of housing in the locality involved which impedes the national defense program. June 28, 1940, c. 440, Title II, § 201, 54 Stat. 681; Oct. 26, 1942, c. 626, § 1, 56 Stat. 988; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

Library references: War and National Defense ⇨201 et seq.; C.J.S. War and National Defense § 133.

Historical Note

Codification. The Department of the Air Force was inserted to conform to section 207(a), (f) of Act July 26, 1947, c. 343, Title II, 61 Stat. 502, and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App. B (123)], July 22, 1949. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947. Sections 205(a) and 207(a), (f) of Act July 26, 1947 were repealed by section 53 of Act Aug. 10, 1956, c. 1041, 70A Stat. 641. Section 1 of Act Aug. 10, 1956 enacted "Title 10, Armed Forces", which in sections 3011–3013 and 8011–8013 continued the military Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

1942 Amendment. Act Oct. 26, 1942 substituted "and officers of the Army and Marine Corps not above the grade of captain, and officers of the Navy and Coast Guard, not above the grade of lieutenant" for "(excluding officers)".

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of

his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

"Public Housing Administration" was substituted for "United States Housing Authority" by 1947 Reorg. Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

Temporary Prohibition Of Projects And Waivers. Temporary prohibition of projects and waivers authorized by this subchapter, see section 1507 of this title.

§ 1502. Initiation and development of projects; jurisdiction; acquisition of property; fees of architects, engineers, etc.

(a) Projects may be initiated under this subchapter by the Department of the Navy or Army or the Air Force to provide dwellings on or near naval or military reservations, posts or bases for rental to the officers, enlisted men and employees of the Departments of the Navy, Army, and Air Force described in section 1501 of this title. Such projects shall be developed by the Department of the Navy or Army or the Air Force or by the Administration, whichever the President determines is better suited to the fulfillment of the purposes of this subchapter with respect to any particular project. If the development of such project is to be undertaken by the Department of the Navy or Army or Air Force, the Administration is authorized to aid the development of the project by furnishing technical assistance and by transferring to such Department the funds necessary for the development of the project. Any project developed for the purpose of this section shall be leased to the Department of the Navy or Army or Air Force by the Administration (which shall have title to such project until repayment of the cost thereof to the Administration as prescribed in such lease) upon such terms as shall be prescribed in the lease, which may be the same terms as are authorized by the United States Housing Act of 1937, as amended, with respect to leases to public housing agencies. All the provisions of said Act which apply to the development of projects by the Administration shall (insofar as applicable and not inconsistent herewith) apply to the development of projects by the Department of the Navy or Army or Air Force. Notwithstanding other provisions of this or any other law, the Department leasing a project shall have the same jurisdiction over such project as it has over the reservation, post or base in connection with which the project is developed.

(b) The Department of the Navy or Army or Air Force, in connection with any project developed or leased by it, and the Administration, in connection with any project developed or assisted by it,

for the purposes of this subchapter, may acquire real or personal property or any interest therein by purchase, eminent domain, gift, lease or otherwise. The provisions of sections 733 of Title 33, section 255 of Title 40 and section 175 of Title 50 shall not apply to the acquisition of any real property by the Department of the Navy or Army or Air Force or by the Administration for the purposes of this subchapter or to the project developed thereon, and the provisions of section 303b of Title 40, shall not apply to any lease of any project developed for the purposes of this subchapter or of any dwelling therein. Condemnation proceedings instituted by the Administration shall be in its own name and the practice and procedure governing such proceedings by the United States shall be followed, and the Administration shall likewise be entitled to proceed in accordance with the provisions of sections 258a–258e and 361–386 of Title 40. If the Administration acquires land in connection with a project to be assisted for the purposes of this subchapter, it may convey such land to the public housing agency involved for a consideration equal to the cost of the land to the Administration. The Departments of the Navy, Army and Air Force and the Administration may negotiate, contract and fix such fees as they determine are reasonable for the services of architects, engineers, surveyors, appraisers, title examiners and real estate negotiators in connection with specific projects developed by them under this subchapter. The Secretaries of Navy, Army, and Air Force are authorized to make available to the Administration any land that is needed for a project to be developed by the Administration and leased to the Department of the Navy or Army or Air Force and to execute such leases, agreements and other instruments with the Administration as may be necessary to carry out the purposes of this subchapter. June 28, 1940, c. 440, Title II, § 202, 54 Stat. 682; Oct. 26, 1942, c. 626, § 1, 56 Stat. 988; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

Library references: War and National Defense ⇐206; C.J.S. War and National Defense § 137.

Historical Note

References in Text. The United States Housing Act of 1937, as amended, referred to in subsec. (a), is classified to chapter 8 of this title.

Sections 361–386 of Title 40, referred to in subsec. (b), related to condemnation proceedings in the District of Columbia, and have been transferred to D.C.Code 1961 Ed., §§ 16—619 to 16—644.

Codification. The Department of the Air Force was inserted to conform to section 207(a), (f) of Act July 26, 1947, c. 343, Title II, 61 Stat. 502, and Secretary of Defense Transfer Order No. 40 [App. A (75)], July 22, 1949. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947. Sections 205(a) and 207(a), (f) of Act July 26, 1947 were repealed by section 53 of Act Aug. 10, 1956, c. 1041, 70A Stat. 641. Section 1 of Act Aug. 10, 1956 enacted "Title 10, Armed Forces", which in sections 3011–3013 and 8011–8013 continued the military Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

1942 Amendment. Subsec. (a). Act Oct. 26, 1942 inserted the word "officers," be-

tween the words "rental to the" and "enlisted men", in the first sentence.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out as a note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

Temporary Prohibition Of Projects And Waivers. Temporary prohibition of projects and waivers authorized by this subchapter, see section 1507 of this title.

§ 1502a. Repealed. Pub.L. 85-861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Historical Note

Section, Act July 15, 1955, c. 368, Title V, § 509, 69 Stat. 351, related to acquisition of housing units for military personnel and dependents, and is covered by section 2678 of Title 10, Armed Forces.

§ 1503. Development of projects by Administration; financial assistance to public housing agencies

In any localities where the President determines that there is an acute shortage of housing which impedes the national defense program and that the necessary housing would not otherwise be provided when needed for persons engaged in national defense activities, the Administration may undertake the development and administration of projects to assure the availability of dwellings in such localities for such persons and their families, or the Administration may extend financial assistance to public housing agencies for the development and administration of such projects. Such financial assistance to public housing agencies shall be extended (except as otherwise provided herein and not inconsistent herewith) under the provisions of, and in the same manner and forms as provided in, title I [1] of the United States Housing Act of 1937, as amended, with respect to other housing projects. June 28, 1940, c. 440, Title II, § 203, 54 Stat. 683; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

[1] So in original. Reference should probably be to entire "United States Housing Act of 1937" since such Act was not divided into titles. See chapter 8 of this title.

Historical Note

References in Text. The United States Housing Act of 1937, as amended, referred to in the text, is classified to chapter 8 of this title.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

Temporary Prohibition Of Projects And Waivers. Temporary prohibition of projects and waivers authorized by this subchapter, see section 1507 of this title.

§ 1504. Rental rates; exemption from limitations of United States Housing Act of 1937

Any contract made for financial assistance under the United States Housing Act of 1937, as amended, may be revised so as to provide that the project involved will be assisted for any of the purposes of

this subchapter. The Department of the Navy or Army or the Air Force or the Administration, in the administration of any project developed for the purposes of this subchapter, shall fix rentals for persons engaged in national defense activities and their families which will be within their financial reach, and the Administration, in any contract for financial assistance or any lease of such a project, shall require the fixing of such rentals. Projects developed by the Department of the Navy or Army or Air Force, or developed or assisted by the Administration, for the purposes of this subchapter shall not be subject to the elimination requirements of sections 1410(a) and 1411(a) of this title, or to any provisions of section 1409 of this title which would require any part of the development cost thereof to be met in any manner other than from funds loaned or furnished by the Administration. Funds expended for the purposes of this subchapter shall be excluded in determining, for the purposes of section 1421(d) of this title, the amounts expended within each State. Except as otherwise provided in this subchapter or as may be inconsistent with this subchapter, all the provisions of title I [1] of the United States Housing Act of 1937 shall apply to this subchapter. During the period when the President determines that in any locality there is an acute need for housing to assure the availability of dwellings for persons engaged in national defense activities, dwellings in a project developed or assisted in said locality which are devoted to the purposes of providing housing for persons engaged in national defense activities shall not be subject to subsections (1) and (2) of section 1402 of this title, and during such period such projects shall be deemed projects of a low-rent character for the purposes of any of the applicable provisions in Title I [1] of the United States Housing Act of 1937. June 28, 1940, c. 440, Title II, § 204, 54 Stat. 683; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

[1] So in original. Reference should probably be to entire "United States Housing Act of 1937", which was not divided into titles. See chapter 8 of this title.

Historical Note

References in Text. The United States Housing Act of 1937, referred to in the text, is classified to chapter 8 of this title.

Codification. The Department of the Air Force was inserted to conform to section 207(a), (f) of Act July 26, 1947, c. 343, Title II, 61 Stat. 502 and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App. B (124)], July 22, 1949. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947. Sections 205(a) and 207(a), (f) of Act July 26, 1947 were repealed by section 53 of Act Aug. 10, 1956, c. 1041, 70A Stat. 641. Section 1 of Act Aug. 10, 1956 enacted "Title 10, Armed Forces", which in sections 3011–3013 and 8011–8013 continued the military Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

Temporary Prohibition Of Projects And Waivers. Temporary prohibition of projects and waivers authorized by this subchapter, see section 1507 of this title.

Notes of Decisions

Library references

War and National Defense ⇐209, 210.
C.J.S. War and National Defense §§ 140 et seq., 141 et seq.

1. Authority to fix rentals

Where neither the Navy nor the War [now Army] Department had any part in the development of a housing project by a housing authority receiving Federal assistance and operating temporarily for the benefit of persons engaged in defense activities, neither the Navy nor the War [now Army] Department had any authority to fix rentals of such project. Jarrett v. Norfolk Redevelopment & Housing Authority, D.C.Cal.1947, 74 F.Supp. 585, affirmed 169 F.2d 409, certiorari denied 69 S.Ct. 238, 335 U.S. 886, 93 L.Ed. 425.

§ 1505. Funds of Administration

The Administration may use for the purposes of this subchapter any of the funds or authorizations heretofore or hereafter made available to it. June 28, 1940, c. 440, Title II, § 205, 54 Stat. 683; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

Historical Note

Transfer of Functions. "Administration" was substituted for "Authority" by 1947 Reorg.Plan No. 3, set out in note under former section 1403 of this title. See, also, notes under section 1403 for prior transfers of functions.

Provisions Inapplicable To This Section. Section 205 of Act June 28, 1940 contained the following sentence: "The provisions of title I of this act shall not apply to this title." The provisions of title I of June 28, 1940 were incorporated in the Code as section 40 of Title 41, Public Contracts, and sections 1151–1162 of Appendix to Title 50, War and National Defense.

Temporary Prohibition Of Projects And Waivers. Temporary prohibition of projects and waivers authorized by this subchapter, see section 1507 of this title.

§ 1506. Administration of utilities and utility services; granting of easements

(a) Any Federal agency (including any wholly owned Government corporation) administering utility installations connected to a utility system for housing under the jurisdiction of the Housing and Home Finance Administrator is authorized—

(1) to continue to provide utilities and utility services to such housing as long as it is under the jurisdiction of the Administrator;

(2) to contract with the purchasers or transferees of such housing to continue the utility connection with such installations and furnish such utilities and services as may be available and needed in connection with such housing, for such period of time (not exceeding the period of Federal administration of such installations) and subject to such terms (including the payment of the pro rata cost to the Government or the market value of the utilities and services furnished, whichever is greater) as may be determined by the head of the agency;

(3) to dispose of such installations, when excess to the needs of the agency, and where not excess to grant an option to purchase, to the purchasers or transferees of such housing, for an amount not less than the appraised value of the installations and upon such terms and conditions as the head of the agency shall establish.

(b) Any Federal agency (including any wholly owned Government corporation) having under its jurisdiction lands across which run any part of a utility system for housing under the jurisdiction of the Administrator is authorized to grant to the Administrator, or to the purchasers or transferees of such housing, easements (which may be perpetual) on such land for utility purposes. June 28, 1948, c. 688, § 2, 62 Stat. 1063.

Library references: War and National Defense ⇐241; C.J.S. War and National Defense § 185.

Historical Note

Codification. Section was not enacted as a part of the National Defense Expediting Act, Title II of which comprises this subchapter.

Legislative History: For legislative history and purpose of Act June 28, 1948, see 1948 U.S.Code Cong. Service, p. 2099.

§ 1507. Temporary prohibition of authorized projects and waivers

During the period from September 1, 1951 to and including June 30, 1953, no project shall be initiated, and the income limitations contained in the United States Housing Act of 1937, as amended, shall not be waived or suspended, pursuant to the authorization therefor in this subchapter. Sept. 1, 1951, c. 378, Title VI, § 616, 65 Stat. 317.

Historical Note

References in Text. The United States Housing Act of 1937, as amended, referred to in the text, is classified to chapter 8 of this title.

Codification. Section was enacted as a part of the Defense Housing and Community Facilities and Services Act of 1951 and not as a part of the National Defense Expediting Act, Title II of which comprises this subchapter.

Legislative History: For legislative history and purpose of Act Sept. 1, 1951, see 1951 U.S.Code Cong.Service, p. 1716.

SUBCHAPTER II.—DEFENSE HOUSING

Historical Note

Revolving Fund. Establishment of revolving fund under which to account for assets and liabilities in connection with public war housing under sections 1521–1524 of this title, see section 1701g–5 of Title 12, Banks and Banking.

§ 1521. Housing and Home Finance Administrator's powers respecting defense housing

In order to provide housing for persons engaged in national-defense activities, and their families, and living quarters for single persons so engaged, in those areas or localities in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities and that such housing would not be provided by private capital when needed, the Housing and Home Finance Administrator (hereinafter referred to as the "Administrator") is authorized:

(a) To acquire prior to the approval of title by the Attorney General (without regard to section 1339 of Title 10 and section 5 of Title 41), improved or unimproved lands or interests in lands by purchase, donation, exchange, lease (without regard to sections 40a and 278a of Title 40, or any time limit on the availability of funds for the payment of rent), or condemnation (including proceedings under sections 257, 258, 361–386, and 258a–258e of Title 40).

(b) By contract or otherwise (without regard to section 1339 of Title 10, section 5 of Title 41, and section 40a of Title 40, or any Federal, State, or municipal laws, ordinances, rules, or regulations relating to plans and specifications or forms of contract, the approval thereof or the submission of estimates therefor) prior to the approval of title by the Attorney General to make surveys and investigations, plan, design, construct, remodel, extend, repair, or demolish structures, buildings, improvements, and community facilities, on lands or interests in lands acquired under the provisions of subsection (a) of this section or on other lands of the United States which may be available (transfers of which for this purpose by the Federal agency having jurisdiction thereof are authorized notwithstanding any other provisions of law), provide proper approaches thereto, utilities, and transportation facilities, and procure necessary materials, supplies, articles, equipment, machinery, and do all things necessary in connection therewith to carry out the purposes of this subchapter: *Provided*, That the cost-plus-a-percentage-of-cost system of contracting shall not be used, but this proviso shall not be construed to prevent the use of the cost-plus-a-fixed-fee form of contract and so far as is consistent with emergency needs, contracts shall be subject to section 5 of Title 41: *Provided*, That the cost per permanent family-dwelling unit shall not exceed an average of $3,750 for all

types of construction for those units located within the continental United States nor an average of $4,250 for those located elsewhere (exclusive of Alaska), and the cost of no family-dwelling unit shall exceed $4,500 within the continental United States or $4,750 elsewhere, except in the Territory of Alaska, where the cost shall not exceed $7,500, exclusive of expenses of administration, land acquisition, public utilities, and community facilities, and the aggregate cost of community facilities shall not exceed 3 per centum of the total cost of all projects: *Provided further*, That where the Administrator shall consider that there is no reasonable prospect of disposing of such housing to meet a need extending beyond the emergency he shall construct temporary units: *Provided further*, That all items of cost with respect to each such family dwelling unit shall be separately estimated with a view toward economy, and no movable equipment shall be installed in such units, unless the Administrator shall, in any particular case, deem such installation to be in the public interest. Oct. 14, 1940, c. 862, Title I, § 1, 54 Stat. 1125; Apr. 29, 1941, c. 80, § 1, 55 Stat. 147; June 28, 1941, c. 260, § 2, 55 Stat. 361; Jan. 21, 1942, c. 14, §§ 1, 11, 56 Stat. 11, 13; 1942 Ex.Ord. No. 9070, § 1, Feb. 24, 1942, 7 F.R. 1529; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73.

Historical Note

References in Text. Section 1339 of Title 10, referred to in subsecs. (a) and (b), was repealed by Act Aug. 10, 1956, c. 1041, § 53, 70A Stat. 641. Similar provisions now appear in sections 4774 and 9774 of Title 10, Armed Forces.

Reference to section 5 of Title 41 in subsecs. (a) and (b) deemed reference to section 252(c) of Title 41, see section 260 (b) of Title 41, Public Contracts.

Section 258 of Title 40, referred to in subsec. (a), has been omitted from the Code as superseded by Rule 71A of the Federal Rules of Civil Procedure, 28 U.S. C.A.

Sections 361–386 of Title 40, referred to in subsec. (a), related to condemnation proceedings in the District of Columbia, and have been transferred to D.C.Code 1961 Ed., §§ 16–619 to 16–644.

1942 Amendment. Opening par. Act Jan. 21, 1942, § 1(a), inserted the phrase "and living quarters for single persons so engaged."

Subsec. (b). Act Jan. 21, 1942, §§ 1(b), 11, substituted "Provided, That the cost per permanent family-dwelling unit . . construct temporary units" for the next to last proviso and inserted in the first proviso the following: "and so far as is consistent with emergency needs, contracts shall be subject to section 5 of Title 41" respectively.

1941 Amendments. Subsec. (b). Act June 28, 1941 substituted "this title" for "this Act", translated in subsec. (b) as "this subchapter".

Act Apr. 29, 1941 substituted "$3,500" for "$3,000" and added last proviso.

Short Title. Act Oct. 14, 1940, which is classified to subchapters II–VII of this chapter, is popularly known as the "Lanham Public War Housing Act."

Savings Clause. Termination of powers at end of emergency, savings clause, see section 1541 of this title.

Transfer of Functions. The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" respectively, wherever appearing in sections 1521–1524, 1541–1550, 1552, 1553, 1561–1563, 1571, 1572, 1575 of this title by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3, set out in a note under former section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

Note 1

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord. No. 9070.

Continuation Of Provisions. Section 1 (a) (12) of Joint Res. July 3, 1952, c. 570, 66 Stat. 332, as amended by Joint Res. Mar. 31, 1953, c. 13, § 1, 67 Stat. 18, provided that this section should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc. No. 2914, 15 F.R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond July 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

Repeal Of Prior Acts Continuing Section. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

Admission of Alaska as State. Admission of Alaska into the Union was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3269, Jan. 5, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub.L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

Legislative History: For legislative history and purpose of Act Apr. 20, 1950, see 1950 U.S.Code Cong.Service, p. 2021.

Cross References

District of Columbia defense housing projects, applicability of section, see section 1561 of this title.

Notes of Decisions

Library references

War and National Defense ⇐241.
C.J.S. War and National Defense § 185.

1. Constitutionality

This section, authorizing former Federal Works Administrator to provide housing for persons engaged in national defense activities and their families in areas in which acute shortage of housing exists, was within war powers granted to Congress. U. S. v. City of Chester, C.C.A.Pa.1944, 144 F.2d 415.

Section 1521 et seq. of this title authorizing former Federal Works Administrator to provide housing for persons engaged in national defense activities and their families in areas in which acute shortage of housing exists without complying with state statutes and municipal ordinances prescribing zoning regulations was valid as within war powers conferred by U.S.C.A.Const. Art. 1, § 8, cl. 11-16, and was not invalid as an attempt to invade field of legislation and regulation within province of state. Tim v. City of Long Branch, 1947, 53 A.2d 164, 135 N.J.L. 549, 171 A.L.R. 320.

2. Purpose

Provision of subsec. (b) of this section authorizing former Federal Works Administrator to provide housing for persons engaged in national defense activities and their families without regard to any federal, state, or municipal laws, ordinances, rules, or regulations was intended by Congress to facilitate speedy construction of housing units in view of war emergency. U. S. v. City of Chester, C.C.A.Pa.1944, 144 F.2d 415.

3. Law governing

Section 1521 et seq. of this title, authorizing creation of Federal Public Housing Administration, did not render Maryland law inapplicable to government which had status of Maryland landlord, and neither increased nor decreased responsibility of government in contrast with any other Maryland landlord. Jones v. U. S., C.A.Md.1957, 241 F.2d 26.

4. Municipal building regulations, compliance with

Under U.S.C.A.Const. Art. 6, cl. 2 and this section authorizing erection of houses for persons engaged in national defense activities and their families in areas where acute shortage of housing exists, former Federal Works Administrator had authority to proceed with construction of emergency housing to house war workers without regard to application of municipal building regulations. U. S. v. City of Chester, C.C.A.Pa.1944, 144 F.2d 415.

Provision of subsection (b) of this section authorizing former Administrator to construct housing units for war workers without regard to municipal building regulations was not in irreconcilable conflict with provision of section 1547 of this title that acquisition by former Administrator of real property should not deprive any state or political subdivision thereof of its criminal or civil jurisdiction in and over such property. Id.

Where subsection (b) of this section authorized construction of housing units to house war workers without regard to state or municipal laws, ordinances, rules, or regulations, further provision of section 1547 of this title that acquisition by former Administrator of real property should not deprive any state or political subdivision thereof of its criminal or civil jurisdiction over property did not render municipal building regulations applicable to land leased by former Administrator for building project. Id.

Application of town building code to housing which was constructed under this section and did not conform to code was not unconstitutional as taking of property without due process or unreasonable exercise of police power, or in any other respect, where units had never become legal nonconforming uses, although United States, as former owner, had been immune from enforcement of code. State v. Stonybrook, Inc., 1962, 181 A.2d 601, 149 Conn. 492, appeal dismissed, certiorari denied 83 S.Ct. 265, 371 U.S. 185, 9 L.Ed. 2d 227.

Where building is constructed or use commenced in violation of ordinance which is repealed by another ordinance containing same restriction against building or use, and providing that existing uses of all buildings which complied with repealed ordinance should be unaffected, the building or use is not entitled to status of legal nonconforming use. Id.

Restrictions of building code, enacted after erection of housing under this section, applied to such housing after it was purchased from United States, where ordinance existing at time of construction contained same restrictions and was repealed by the building code. Id.

5. Local ordinances—Enforcement

Issuance of building permit for alteration to make housing units constructed under this section conform to town building code, and failure to revoke such permit, did not estop town from enforcing building code or bar prosecution for violation of code by laches, where reasonable time for completion of alteration was given. State v. Stonybrook, Inc., 181 A.2d 601, 149 Conn. 492, appeal dismissed, certiorari denied 83 S.Ct. 265, 371 U.S. 185, 9 L.Ed.2d 227.

Town was not estopped from enforcing building code against purchaser of housing erected under this section and enforcement of such code was not barred by laches where, shortly after purchase from Government town building inspector notified purchaser of violation of code, purchaser agreed to correct violations, and building inspector granted time for correction. Id.

6. —— Immunity

United States, as mortgagee of housing which was erected under this section and did not fully conform to requirements of town building code, was not owner of property and did not have legal title thereto in such manner as to give mortgagor immunity from compliance with the code. State v. Stonybrook, Inc., 1962, 181 A.2d 601, 149 Conn. 492, appeal dismissed, certiorari denied 83 S.Ct. 265, 371 U.S. 185, 9 L.Ed.2d 227.

This section does not shield by Federal immunity a private purchaser of Federal housing from reasonable local regulations designed to protect public safety. Id.

7. Remedy for possible damage

Where interest taken by Federal Government in tract of land was exclusive use of land and improvements thereon for period of one year with right to re-

new from year to year for duration of war emergency and for three years thereafter, any injury which might occur as result of removal of improvements thereon would not be compensated in the proceeding for taking, but owners would have a remedy by original action against Government if and when fact of injury and amount were ascertainable. U. S. v. 16.747 Acres of Land, More or Less, Situate in City of Wilmington, New Castle County, Del., D.C.Del.1943, 50 F.Supp. 389.

8. Jurisdiction

Where land was condemned by the United States for a defense housing project but only exclusive use for one year with right to renew use from year to year was taken, the court could not, after annual rental had been ascertained, retain jurisdiction of the subject matter for the subsequent ascertainment of damages growing out of the taking and failure to surrender the property in its former condition. U. S. v. 14.4756 Acres of Land in Christiana Hundred, New Castle County, D.C.Del.1947, 71 F.Supp. 1005.

Federal district court had jurisdiction of action by the United States to enjoin municipality and its officers from interfering with construction of housing units, since district court had original jurisdiction where United States was plaintiff. U. S. v. City of Philadelphia, D.C.Pa.1944, 56 F.Supp. 862, affirmed 147 F.2d 291, certiorari denied 65 S.Ct. 1410, 325 U.S. 870, 89 L.Ed. 1989.

Housing projects, which were constructed by the United States on military or naval reservations or bases within the State of California for accommodation of defense workers and others, were subject to the exclusive jurisdiction of the United States. Johnson v. Morrill, 1942, 126 P.2d 873, 20 Cal.2d 446.

9. Powers of successor

Where, in condemnation action by Commissioner of Public Housing to obtain land to provide housing for defense workers, estate appropriated by Government was exclusive use of the land for one year with right of Government to renew from year to year for duration of war emergency and three years thereafter, contention that Government's right to renew lease was conditioned upon payment of the rental and that no rental had been paid or tendered was without merit in view of fact that such rental had been deposited in court. U. S. v. Certain Parcels of Land in City of Cleveland, Cuyahoga County, State of Ohio, D.C.Ohio 1957, 149 F.Supp. 696.

The Commissioner of former Federal Public Housing Authority, bringing action in name of United States to condemn land in Alaska after President had found acute housing shortage in the area which private capital would not remedy and which would impede national defense, was acting within powers which Commissioner received as successor to Federal Works Administrator. U. S. v. Certain Land in Juneau, Juneau Recording Precinct, First Division, Territory of Alaska, D.C.Alaska, 1947, 70 F.Supp. 609.

10. Condemnation

Under this subchapter authorizing the condemnation of land for housing for persons engaged in national-defense activities, the Administrator is authorized to acquire by condemnation the fee simple title absolute in private lands instead of a lesser quantum of interest, such as leasehold, in view of express power to condemn the "lands" of the owners, the administrative option between "purchase" and "lease" being clearly stated. Richmond Inv. Co. v. U. S., C.A.Cal.1957, 249 F.2d 811.

Where Federal Government under section 1521 et seq. of this title constructed housing units and other buildings on land, which Government mistakenly thought was Government land, but which in fact, was owned by county, and Government brought suit to condemn such land, county was entitled to award only for value of land and not for value of improvements constructed by Government. Bibb County, Ga. v. U. S., C.A.Ga. 1957, 249 F.2d 228.

Under this chapter delegating authority to former Federal Works Administrator to condemn land for use in carrying out this chapter the Government's power to condemn is co-extensive with the power to purchase. Lewis v. U. S., C.A.Cal. 1952, 200 F.2d 183, certiorari denied 73 S.Ct. 647, 345 U.S. 907, 97 L.Ed. 1343.

Under this section authorizing condemnation of land to provide housing for persons engaged in national-defense activities the use of the word "temporary" with reference to the type of unit to be constructed did not pertain to the land on which the housing is situated. Id.

The laws authorizing exercise of the sovereign power of eminent domain are to be strictly followed. U. S. v. 2.4 Acres of Land, More or Less, in Lake County, Ill., C.C.A.Ill.1943, 138 F.2d 295.

Where the President of the United States did not approve specific project, as required by this subchapter and this subchapter was the authority relied on by the United States for the condemnation, the condemnation was not authorized by this subchapter and was without authority of law, and the condemnation proceeding would be dismissed. U. S. v. Certain Parcels of Land in Fairfax County, Com. of Va., D.C.Va.1955, 161 F.Supp. 560.

Where Commissioner of Public Housing had condemned land to provide for housing for persons engaged in national defense activities, condemnee's successor, who received rental payment in accordance with the taking, and who had signed stipulation agreeing to an increase in the annual rental, would, along with husband, be estopped from questioning validity of original decree in the condemnation action. U. S. v. Certain Parcels of Land in City of Cleveland, Cuyahoga County, State of Ohio, D.C.Ohio 1957, 149 F.Supp. 696.

Where termination of national emergency precluded renewal of lease for any additional period under original declaration of taking by Commissioner of Public Housing to obtain property to provide housing for defense workers, subsequent condemnation to appropriate use of the land for another year was properly instituted by proceedings brought in the original condemnation action, instead of by separate and independent action, in view of fact that each prior year's renewal had been handled by order of court entered in the original case. Id.

Former Commissioner of former Federal Public Housing Authority had condemnation authority both through Second War Powers Act, 50 App. § former 632a, and through this section creating former Federal Works Administrator, and hence former Commissioner's condemnation proceeding was authorized by law, whatever the effect of amendments to Second War Powers Act, 50 App. § 645. U. S. v. Certain Land in Juneau, Juneau Recording Precinct, First Division, Territory of Alaska, D.C.Alaska 1947, 70 F. Supp. 609.

11. Public use

The taking of land by Federal Government to be used in connection with defense housing project for erection of stores from which defense workers occupying units in housing project could purchase supplies was proper as a taking for a "public use". U. S. v. Certain Parcels of Land in Sewickley Tp., Allegheny County, Pa., D.C.Pa.1944, 54 F. Supp. 943.

Fact, if established, that land taken in condemnation proceedings by Federal Government for use in connection with defense housing project was to be sold or leased to a private concern, did not of itself invalidate the taking as not being a taking for "public use". Id.

12. Market value

Where land was condemned by the United States for a defense housing project but only exclusive use for one year with right to renew use from year to year was taken, the factors governing the fair market value of the use were largely the same as if arrangement had been between private parties. U. S. v. 14.4756 Acres of Land in Christiana Hundred, New Castle County, D.C.Del.1947, 71 F. Supp. 1005.

13. Breach of contract

Where government contractor agreed to erect housing units for war workers pursuant to subsection (b) of this section, and city ordered subcontractor to suspend plumbing work until city's permission was obtained, and the United States sued to enjoin city from interfering with construction, contractor, which was compelled to proceed while plumbing installations could not be proceeded with, could not recover damages from the Government for breach of alleged implied condition that Government would not increase cost of contractor's performance. Geo. H. Evans & Co. v. U. S., D.C.Pa.1947, 74 F.Supp. 58.

14. Removal of improvements

Where, in condemnation action by Commissioner of Public Housing to obtain property to provide housing for defense workers, estate appropriated was exclusive use of certain land for one year with right of Government to renew from year to year for duration of war emergency and three years thereafter and to remove all improvements placed thereon at termination of such use, termination of emergency and expiration of the three-year period prevented further renewal of lease under the original taking, but did not cause forfeiture of Government's improvements. U. S. v. Certain Parcels of Land in City of Cleveland, Cuyahoga County, State of Ohio, D.C.Ohio 1957, 149 F.Supp. 696.

Where expiration of National Emergency prevented yearly renewal of lease obtained by Government on land under

condemnation action appropriating exclusive use of land for one year with right in Government to renew from year to year for duration of war emergency and three years thereafter and to remove all Government's improvements at termination of such use, Government could not renew the lease but could bring one additional condemnation action to extend lease to realize salvage on the improvements. Id.

Where interest taken by Federal Government in tract of land was exclusive use of land and improvements thereon for period of one year with right to renew from year to year for duration of war emergency and three years thereafter, Government's right to remove improvements placed by it on land would run concurrently with use and occupancy. U. S. v. 16.747 Acres of Land, More or Less, Situate in City of Wilmington, New Castle County, Del., D.C.Del.1943, 50 F.Supp. 389.

15. Adjustment for increased costs

Regulation of former Price Administrator establishing maximum rents for defense-rental area was not shown to be arbitrary, although no provision was made for adjustment on account of increases in operating costs occurring after maximum rent date. Chatlos v. Brown, Em.App.1943, 136 F.2d 490.

16. Appraiser to fix value

Where interest sought to be taken by Federal Government in tract of land was exclusive use of land and improvements thereon for period of one year with right to renew from year to year for duration of war emergency and three years thereafter, value of interest taken was to be ascertained by having expert appraiser determine fair annual rental determined as though Government had rented property for a year with an option to renew from year to year, with right to remove improvements at end of term. U. S. v. 16.747 Acres of Land, More or Less, Situate in City of Wilmington, New Castle County, Del., D.C.Del.1943, 50 F. Supp. 389.

17. Evidence

Evidence did not require the finding that the Housing Administrator in condemning a fee simple title absolute instead of a lesser quantum of interest to provide temporary war-time housing abused his discretion. Lewis v. U. S., C.A.Cal.1952, 200 F.2d 183, certiorari denied 73 S.Ct. 647, 345 U.S. 907, 97 L.Ed. 1343.

§ 1522. Definitions; actions to recover developed property

As used in subchapters II–VII of this chapter, (a) the term "persons engaged in national-defense activities" shall include (1) enlisted men in the naval or military services of the United States; (2) employees of the United States in the Departments of the Navy, Army and Air Force assigned to duty at naval or military reservations, posts, or bases; (3) workers engaged or to be engaged in industries connected with and essential to the national defense; (4) officers of the Army, Air Force and Marine Corps not above the grade of captain, and officers of the Navy and Coast Guard, not above the grade of lieutenant, senior grade, assigned to duty at naval or military reservations, posts, or bases, or to duty at defense industries: *Provided*, That any proceedings for the recovery of possession of any property or project developed or constructed under this subchapter shall be brought by the Administrator in the courts of the States having jurisdiction of such causes and the laws of the States shall be applicable thereto; (b) the term "Federal agency" means any executive department or office (including the President), independent establishment, commission, board, bureau, division, or office in the executive branch of the United States Government, or other agency of the United States, including corporations in which the United States owns all or a majority of the stock, directly or indirectly.

Oct. 14, 1940, c. 862, Title I, § 2, 54 Stat. 1126; Jan. 21, 1942, c. 14, § 2, 56 Stat. 11; 1942 Ex.Ord. No. 9070, § 1, Feb. 24, 1942; 7 F.R. 1529; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73.

Historical Note

Codification. The Department of the Air Force was inserted under the authority of section 207(a), (f) of Act July 26, 1947, c. 343, Title II, 61 Stat. 502. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947. Sections 205(a) and 207(a), (f) of Act July 26, 1947 were repealed by section 53 of Act Aug. 10, 1956, c. 1041, 70 A Stat. 641. Section 1 of Act Aug. 10, 1956 enacted "Title 10, Armed Forces", which in sections 3011–3013 and 8011–8013 continued the military Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

1942 Amendment. Act Jan. 21, 1942 inserted clause (a) (4) and proviso.

Transfer of Functions. All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Coast Guard, referred to in this section, is generally a service in the Treasury Department, but such Plan excepted, from the transfer, the functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under sections 1 and 3 of Title 14, Coast Guard.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3, set out as a note under former section 1403 of this title.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940, set out in such subchapters, apparently functions under sections 1562 and 1563 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No.9070; 1947 Reorg.Plan No. 3, and 1950 Reorg.Plan No. 17, all referred to in notes above.

Cross References

Public work defined, see section 1531 of this title.

Notes of Decisions

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1. Purpose

Provision of this section for state court actions by Public Housing Administrator to recover possession of property was intended to apply to eviction proceedings, in order to avoid inconvenience of tenants having to travel to distant Federal courts, and had no application to suit for cancellation of title. Ehrlich v. U. S., C.A.Ga.1958, 252 F.2d 772.

2. Jurisdiction

The federal District Court had jurisdiction of suit by United States, the primary purpose of which was to remove cloud cast on title to land acquired under this subchapter by deed from former Housing Authority and deed by grantee of such former Authority to others. Gibbs v. U. S., C.C.A.N.C.1945, 150 F.2d

504, certiorari denied 66 S.Ct. 175, 326 U. S. 771, 90 L.Ed. 465.

3. Parties

A proceeding to dispossess tenant from defense housing project which had been constructed by the Navy, and management of which had been turned over to former National Housing Agency, was properly instituted by the United States, over objection that either National Capital Housing Authority or Federal Public Housing Administration was the proper party plaintiff, since former proviso of this section providing that proceedings for recovery of possession of property "developed" or "constructed" under this subchapter shall be brought by the Administrator of Federal Public Housing, was not applicable, and since the United States could bring suit in its own name to enforce rights of any of its departments. Wittek v. U. S., D.C.Mun.App. 1947, 54 A.2d 747, remanded on other grounds 171 F.2d 8, 83 U.S.App.D.C. 377, reversed on other grounds 69 S.Ct. 1108, 337 U.S. 346, 93 L.Ed. 1091.

§ 1523. Appropriations

There is authorized to be appropriated to carry out the purpose of this subchapter, in accordance with the authority therein contained and for administrative expenses in connection therewith, including transfer of household goods and effects as provided by section 73c—1 of Title 5, and regulations promulgated thereunder, not to exceed the sum of $1,500,000,000, to remain available until expended: *Provided, however,* That the Administrator is authorized to reimburse, from funds which may be appropriated pursuant to the authority of this subchapter the sum of $3,300,000 to the emergency funds made available to the President under the Act of June 11, 1940, c. 313, 54 Stat. 265 entitled "An Act making appropriations for the Navy Department and the naval service for the fiscal year ending June 30, 1941, and for other purposes" (Public, Numbered 588), and the sum of $6,700,000 to the emergency funds made available to the President under the Military Appropriation Act, 1941, approved June 13, 1940 (Public, Numbered 611): *Provided further,* That the term "administrative expenses" as used herein shall be deemed to include administrative expenses of the Housing and Home Finance Agency in connection with any functions performed by it, as a claimant agency under the controlled materials plan established pursuant to subsection (a) of section 1152 of Appendix to Title 50, with respect to priorities or allocations of materials relating to public or private housing. Oct. 14, 1940, c. 862, Title I, § 3, 54 Stat. 1126; Apr. 29, 1941, c. 80, § 2, 55 Stat. 147; June 28, 1941, c. 260, § 2, 55 Stat. 361; Jan. 21, 1942, c. 14, § 3, 56 Stat. 12; 1942 Ex.Ord.No.9070, § 1, Feb. 24, 1942, 7 F.R. 1529; Oct. 1, 1942, c. 572, 56 Stat. 763; July 7, 1943, c. 196, §§ 1, 2, 57 Stat. 387; July 1, 1944, c. 374, 58 Stat. 720; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

References in Text. Section 73c—1 of Title 5, referred to in the text, was repealed by Act Aug. 2, 1946, c. 744, § 2, 60 Stat. 807, eff. Nov. 1, 1946, and is covered by section 73b—1 of Title 5, Executive Departments and Government Officers and Employees.

1944 Amendment. Act July 1, 1944 inserted in last proviso immediately fol-

lowing "performed by it" words ", as a claimant agency * * * to Title 50,", and deleted "for persons engaged in national defense activities" following "public or private housing.".

1943 Amendment. Act July 7, 1943 substituted "$1,500,000,000" for "$1,200,000,000," and added proviso relating to administrative expenses.

1942 Amendments. Act Oct. 1, 1942 substituted "$1,200,000,000" for "$600,000,000".

Act Jan. 21, 1942 amended portion of section preceding proviso.

1941 Amendments. Act June 28, 1941 substituted "this title" for "this Act", translated herein as "this subchapter."

Act Apr. 29, 1941, substituted "$300,000,000" for "$150,000,000".

Transfer of Functions. The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3, set out as a note under former section 1403 of this title.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Additional Appropriations. Act Apr. 25, 1945, c. 95, Title I, 59 Stat. 82, as amended July 5, 1945, c. 271, Title I, 59 Stat. 420, provided $84,373,000 as an additional amount to carry out the purposes of this subchapter.

Prior Additional Appropriations:

June 28, 1944, c. 304, Title I, § 1, 58 Stat. 604, $7,500,000.

Apr. 1, 1944, c. 152, Title I, § 1, 58 Stat. 153, $115,000,000.

Dec. 23, 1943, c. 380, Title I, 57 Stat. 618, $50,000,000.

July 12, 1943, c. 229, Title I, 57 Stat. 540, $50,000,000.

Dec. 23, 1941, c. 621, 55 Stat. 855, $300,000,000.

Dec. 17, 1941, c. 591, Title III, 55 Stat. 818, $300,000,000.

May 24, 1941, c. 132, § 1, 55 Stat. 199, $150,000,000.

Mar. 1, 1941, c. 9, § 1, 55 Stat. 14, $5,000,000.

Res. Oct. 14, 1940, c. 857, 54 Stat. 1115, $75,000,000.

Determination Of Essentiality Of Projects. Act July 5, 1945, c. 271, Title I, 59 Stat. 420, provided in part: "Any project in which the War Department or the Navy Department does not have a paramount interest, no obligation shall be incurred unless and until the Director of the Bureau of the Budget shall have determined its essentiality to the prosecution of the war."

§ 1524. Declaration of policy; disposal of housing

It is declared to be the policy of this subchapter to further the national defense by providing housing in those areas where it cannot otherwise be provided by private enterprise when needed, and that such housing may be sold and disposed of as expeditiously as possible: *Provided*, That in disposing of said housing consideration shall be given to its full market value and said housing or any part thereof shall not, unless specifically authorized by Congress, be conveyed to any public or private agency organized for slum clearance or to provide subsidized housing for persons of low income: *Provided further*, That the Administrator may, in his discretion, upon the request of the Secretaries of the Army, Air Force or Navy transfer to the jurisdiction of the Army, Air Force or Navy Departments such housing constructed under the provisions of subchapters II–VII of this chapter as may be considered to be permanently useful to the Army, Air Force or Navy: *Provided further*, That whenever the Administrator disposes of any permanent house or structure containing not more than four family dwelling units under authority of this subchapter by offering such house or structure for sale on an indi-

vidual basis, he shall, when the purchaser is a veteran buying for his own occupancy, sell any such house or structure (1) at a purchase price not in excess of the apportioned cost of such house or structure and of the land and appurtenances allocated thereto, together with the apportioned share of the cost of all utilities and other facilities provided for and common to the project of which such house or structure is a part, or (2) at a purchase price not in excess of such considered full market value of such house or structure and the land, appurtenances, utilities and facilities allocated thereto, whichever purchase price is the less: *Provided further*, That, for the purposes of this section, housing constructed or acquired under the provisions of Public Law 781, Seventy-sixth Congress, approved September 9, 1940, or Public Law 9, 73, or 353, Seventy-seventh Congress, approved, respectively, March 1, 1941, May 24, 1941, and December 17, 1941, shall be deemed to be housing constructed or acquired under subchapters II–VII of this chapter. Oct. 14, 1940, c. 862, Title I, § 4, as added Jan. 21, 1942, c. 14, § 4, 56 Stat. 12, and amended 1942, Ex. Ord. No. 9070, § 1, Feb. 24, 1942, 7 F.R. 1529; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 19, 1948, c. 520, 62 Stat. 492; June 28, 1948, c. 688, § 3, 62 Stat. 1064; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73.

Historical Note

References in Text. Public Law 781, Seventy-Sixth Congress, referred to in text, was the Second Supplemental National Defense Act, 1941, Act Sept. 9, 1940, c. 717, 56 Stat. 872.

Public Law 9 was the Urgent Deficiency Appropriation Act, 1941, Act Mar. 1, 1941, c. 9, 55 Stat. 14.

Public Law 73 was the Additional Urgent Deficiency Appropration Act, 1941, Act May 24, 1941, c. 132, 55 Stat. 197.

Public Law 353 was the Third Supplemental National Defense Appropriation Act, 1941, Act Dec. 17, 1941, c. 591, 55 Stat. 810.

Codification. The Department of the Air Force was inserted to conform to section 207(a), (f) of Act July 26, 1947, c. 343, Title II, 61 Stat. 502 and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App. B. (126)], July 29, 1949. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947. Sections 205(a) and 207(a), (f) of Act July 26, 1947 were repealed by section 53 of Act Aug. 10, 1956, c. 1041, 70A Stat. 641. Section 1 of Act Aug. 10, 1956 enacted "Title 10, Armed Forces", which in sections 3011–3013 and 8011–8013 continued the military Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

1948 Amendments. Act June 28, 1948, added last proviso.

Act June 19, 1948 added proviso to permit the sale of certain permanent war housing to veterans at a purchase price not in excess of the cost of construction.

Transfer of Functions. The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg. Plan No. 3, set out as a note under former section 1403 of this title.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940, and set out in such subchapters,

apparently functions under sections 1562, and 1563 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No.9070; 1947 Reorg.Plan No. 3, and 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269. See notes under section 1542 of this title.

Legislative History: For legislative history and purpose of Act June 19, 1948, see 1948 U.S.Code Cong.Service, p. 1892. See, also, Act June 28, 1948, 1948 U.S. Code Cong.Service, p. 2099.

Notes of Decisions

Library references

War and National Defense ⇐203.
C.J.S. War and National Defense § 134.

1. Retention of control

This section authorizing former Federal Works Administrator to transfer to the Army or Navy Department jurisdiction over such housing as may be permanently useful to the Army or Navy did not contemplate that the transferor thereafter would retain any control or power of disposition of the property. Gibbs v. U. S., C.C.A.N.C.1945, 150 F.2d 504, certiorari denied 66 S.Ct. 175, 326 U.S. 771, 90 L.Ed. 465.

Where Housing Administrator transferred to Navy Department housing constructed under this chapter, the power of the Administrator to subsequently dispose of the property to another ceased to exist and such other person obtained nothing by subsequent deed. Id.

Suits by United States to evict tenants from houses in Federal low rent housing project, constructed and originally operated by Navy Department but later operated by other government agencies until jurisdiction over it was again vested in such department on official request of Secretary of the Navy, were not subject to dismissal on ground that Navy Department had not legally or regularly reacquired jurisdiction over project, in view of this section providing that housing constructed or acquired under this section authorizing construction of projects should be deemed housing constructed or acquired under this chapter. Miller v. U. S., D.C.Mun.App.1950, 77 A. 2d 171.

2. Transfer of housing

Where total project involved 415 acres and some houses had been built and it was desired that places of business should be erected on some six acres still vacant, such six acres were subject to Housing Administrator's power to transfer "housing" constructed under this chapter to the Army or Navy Department. Gibbs v. U. S., C.C.A.N.C.1945, 150 F.2d 504, certiorari denied 66 S.Ct. 175, 326 U.S. 771, 90 L.Ed. 465.

3. Recording or publishing

The transfer of housing constructed under this chapter by former Administrator to Navy was not invalidated by failure to record or publish such transfer. Gibbs v. U. S., C.C.A.N.C.1945, 150 F.2d 504, certiorari denied 66 S.Ct. 175, 326 U.S. 771, 90 L.Ed. 465.

4. Multiple offenses

In prosecution for a violation of this section and section 1001 of Title 18 penalizing fraudulent statements within the jurisdiction of any agency of the United States where the charge in fact related specifically to the latter charge and convictions under it were entirely proper, the fact that the offense could have been prosecuted under this section was for the election of the Government and not the defendant. Ehrlich v. U. S., C.A.Ga. 1956, 238 F.2d 481.

In prosecution for conspiracy to violate this section and for the substantive offense of violation of section 1001 of Title 18, by having by trick or device concealed a material fact from a government agency, acquittal on conspiracy count did not bar a conviction on the substantive counts on the ground of inconsistencies, since there was no inconsistency in finding that the veterans, the alleged co-conspirators, were not such and one finding the defendant guilty of the substantive offense. Id.

5. Restitution of purchase price

Federal Government would not be required to make restitution of purchase

price as condition to recovery of former public housing units acquired by defendant at preferential price for which he was not eligible through fraudulent scheme for utilizing for himself preferences available to veterans. U. S. v. Ehrlich, D.C.Ga.1956, 147 F.Supp. 660, affirmed in part, reversed in part on other grounds 252 F.2d 772.

6. Dismissal

In representative action by World War II veteran to have sale of government housing units declared void, and to enjoin consummation of the sale, the United States Government was an indispensable party and granting of motion to dismiss as to the United States, the Public Housing Administration, and Regional Director of the Administration required a dismissal of the action as to all the other defendants. Van Deman v. U. S., D.C. Ind.1948, 119 F.Supp. 599.

7. Evidence

In action brought by Federal Government to recover former public housing, to which defendant had allegedly obtained title at preferential price, for which he was not eligible, evidence established that defendant had in fact illegally acquired housing units through "strawman" purchases and purported financing arrangements with indigent veterans having requisite priority and residing on property. U. S. v. Ehrlich, D.C. Ga.1956, 147 F.Supp. 660, affirmed in part, reversed in part on other grounds 252 F. 2d 772.

SUBCHAPTER III.—DEFENSE PUBLIC WORKS

Historical Note

Revolving Fund. Establishment of revolving fund under which to account for assets and liabilities in connection with community facilities provided or assisted under sections 1531–1534 of this title, see section 1701g—5 of Title 12, Banks and Banking.

§ 1531. Declaration of policy; definition of "public work"

It is declared to be the policy of this subchapter to provide means by which public works may be acquired, maintained, and operated in the areas described in section 1532 of this title. As used in this subchapter, the term "public work" means any facility necessary for carrying on community life substantially expanded by the national-defense program, but the activities authorized under this subchapter shall be devoted primarily to schools, waterworks, sewers, sewage, garbage and refuse disposal facilities, public sanitary facilities, works for the treatment and purification of water, hospitals and other places for the care of the sick, recreational facilities, and streets and access roads. Oct. 14, 1940, c. 862, Title II, § 201, as added June 28, 1941, c. 260, § 3, 55 Stat. 361.

Cross References

Federal agency defined, see section 1522 of this title.

Persons engaged in national defense activities defined, see section 1522 of this title.

Notes of Decisions

1. Electric facilities

Facilities for the generation and transmission of electricity for light and power were comprehended within the term "public work" as defined by this section providing means for acquisition, maintenance and operation by former Federal Works Administrator of public works necessary to the health, safety or welfare of persons engaged in national defense activities. Puerto Rico Ry. Light & Power Co. v. U. S., C.C.A.Puerto Rico 1942, 131 F.2d 491.

§ 1532. Housing and Home Finance Administrator's powers respecting defense public works; definition of "private agency"

Whenever the President finds that in any area or locality an acute shortage of public works or equipment for public works necessary to the health, safety, or welfare of persons engaged in national-defense activities exists or impends which would impede national-defense activities, and that such public works or equipment cannot otherwise be provided when needed, or could not be provided without the imposition of an increased excessive tax burden or an unusual or excessive increase in the debt limit of the taxing or borrowing authority in which such shortage exists, the Housing and Home Finance Administrator is authorized, with the approval of the President, in order to relieve such shortage—

(a) To acquire, prior to the approval of title by the Attorney General if necessary (without regard to section 1339 of Title 10, and section 5 of Title 41), improved or unimproved lands or interests in lands by purchase, donation, exchange, lease (without regard to sections 34 and 278a of Title 40, or any time limit on the availability of funds for the payment of rent), or condemnation (including proceedings under sections 257, 258, 361–386 and 258a–258e of Title 40), for such public works.

(b) By contract or otherwise (without regard to section 1339 of Title 10, section 5 of Title 41, section 278a of Title 40, or any Federal, State, or municipal laws, ordinances, rules, or regulations relating to plans and specifications or forms of contract, the approval thereof or the submission of estimates therefor), prior to the approval of title by the Attorney General if necessary, to plan, design, construct, remodel, extend, repair, or lease public works, and to demolish structures, buildings, and improvements, on lands or interests in lands acquired under the provisions of subsection (a) of this section or on other lands of the United States which may be available (transfers of which for this purpose by the Federal agency having jurisdiction thereof are authorized notwithstanding any other provisions of law), provide proper approaches thereto, utilities, and transportation facilities, and procure necessary materials, supplies, articles, equipment, and machinery, and do all things in connection therewith to carry out the purposes of this subchapter.

(c) To make loans or grants, or both, to public and private agencies for public works and equipment therefor, and to make contributions to public or private agencies for the maintenance and operation of public works, upon such terms and in such amounts as the Administrator may consider to be in the public interest. As used in this paragraph, the term "private agency" means any private agency no part of the net earnings of which inures to the benefit of any private shareholder or individual. Oct. 14, 1940, c. 862, Title II, §

202, as added June 28, 1941, c. 260, § 3, 55 Stat. 362, and amended 1942 Ex.Ord. No. 9070, § 1, Feb. 24, 1942, 7 F.R. 1529; 1947 Reorg. Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269.

Historical Note

References in Text. Section 1339 of Title 10, referred to in pars. (a) and (b), was repealed by Act Aug. 10, 1956, c. 1041, § 53, 70A Stat. 641. Similar provisions now appear in sections 4774 and 9774 of Title 10, Armed Forces.

Reference to section 5 of Title 41 in pars. (a) and (b) deemed reference to section 252(c) of Title 41, see section 260 (b) of Title 41, Public Contracts.

Section 258 of Title 40, referred to in par. (a), has been omitted from the Code as superseded by Rule 71A of the Federal Rules of Civil Procedure, 28 U.S.C.A.

Sections 361–386 of Title 40, referred to in par. (a), related to condemnation proceedings in the District of Columbia, and have been transferred to D.C.Code 1961 Ed., §§ 16—619 to 16—644.

Savings Clause. Termination of powers at end of emergency, saving clause, see section 1541 of this title.

Transfer of Functions. All functions, except as herein described, of the Administrator of General Services under sections 1531–1534 of this title, together with so much of any other function of the Administrator of General Services or of the General Services Administration as is incidental to or necessary for the carrying out of the provisions of such sections, were transferred to the Housing and Home Finance Administrator by 1950 Reorg.Plan No. 17, set out in note under section 133z—15 of Title 5, Executive Departments and Government Officers and Employees. Section 2 of the Plan excepted, from the transfer, functions with respect to the holding, management, and disposition of securities received prior to the effective date of such Plan (May 24, 1950) by the General Services Administration or its predecessor agency (Federal Works Agency) by reason of the disposal of property constructed or otherwise acquired under sections 1531–1534 of this title, and functions with respect to litigation, and the liquidation of claims, arising out of the acquisition of land or the construction of facilities under those sections. Section 3 of the Plan vested authority in the Housing and Home Finance Administrator to delegate any of the transferred functions to any other officer, or to any agency or employee, of the Housing and Home Finance Agency. For transfer of records, property, personnel, and funds, see section 4 of the Plan.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3, set out as a note under former section 1403 of this title.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No. 9070.

Effective Date of Transfer of Functions. Transfer of functions as effective July 1, 1949, see note set out under section 471 of Title 40, Public Buildings, Property, and Works.

Continuation of Provisions Until July 1, 1953. Section 1(a) (12) of Joint Res. July 3, 1952, c. 570, 66 Stat. 332, as amended by Joint Res. Mar. 31, 1953, c. 13, § 1, 67 Stat. 18, provided that this section should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950, by 1950 Proc.No. 2914, 15 F.R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond

July 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

Repeal of Prior Acts Continuing Section. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

Cross References

Federal aid for school construction in areas affected by federal activities, see section 631 et seq. of Title 20, Education.

Notes of Decisions

Library references

War and National Defense ⇔204.
C.J.S. War and National Defense §§ 135, 136.

1. Presidential determination and approval

Under this section, providing for acquisition, maintenance and operation of public works necessary to the health, safety or welfare of defense workers, the President of the United States had to not only find the existence of a shortage of such works in a given area, but had to approve at least in main outline the particular plan, program or project formulated by former Federal Works Administrator for the relief of the defined shortage before the former Administrator could proceed under this section. Puerto Rico Ry. Light & Power Co. v. U. S., C.C.A.Puerto Rico 1942, 131 F.2d 491.

2. Land and interests in land

Power of condemnation given by section 1531 et seq. of this title, authorizing condemnation for public works in areas of defense activity, extends only to land or interests in land. U. S. v. Certain Parcels of Land in Fairfax County, C.A.Va.1952, 196 F.2d 657, reversed on other grounds 73 S.Ct. 693, 345 U.S. 344, 97 L.Ed. 1061, rehearing denied 73 S.Ct. 936, 345 U.S. 960, 97 L.Ed. 1380.

"Immovables" as defined in the Civil Code, §§ 262, 263, as machinery, implements, etc., placed by owner upon his own land to meet the needs of the business or industry which he conducts thereon are not regarded as "land" or "interests in land", within meaning of this section authorizing the United States to condemn improved or unimproved land or interests therein as a means of acquiring, maintaining and operating public works necessary to the health, safety and welfare of defense workers. Puerto Rico Ry. Light & Power Co. v. U. S., C.C.A.Puerto Rico 1942, 131 F.2d 491.

3. Property privately owned

This section authorizing condemnation of improved or unimproved lands or interests therein in order to afford the public works necessary to health, safety and welfare of defense workers did not authorize United States to condemn and take over as a going concern all the real and personal properties of a privately owned public utility. Puerto Rico Ry. Light & Power Co. v. U. S., C.C.A.Puerto Rico 1942, 131 F.2d 491.

4. Sewer facilities

Where President acted under authorized Acting Administrator of Federal Works Agency to provide sewer facilities necessary to health, safety and welfare of persons engaged in defense activities in certain area, approval authorized not only the projected plan for construction of sewer system, but authorized acquisition, for nominal sum, of existing sewer facilities, acquisition of which effected a saving in cost of project. U. S. v. Certain Parcels of Land in Fairfax County, Va., C.A.Va.1955, 228 F.2d 280.

5. Restrictions

Under this section authorizing acquisition of lands or equipment for public works necessary in national-defense activities where President approves such procedure, approval of a project does not authorize construction of something entirely different. U. S. v. Certain Parcels of Land in Fairfax County, Va., C.A.Va.1955, 228 F.2d 280.

6. Pleadings

In proceeding to condemn properties of power company extending over 35 municipalities of Puerto Rico, petition which did not allege that President of the United States had given his approval to the particular project was insufficient as against demurrer under this section providing for the acquisition, maintenance and operation of public works necessary to the health, safety or welfare of persons engaged in national defense activities. Puerto Rico Ry. Light & Power Co. v. U. S., C.C.A.Puerto Rico 1942, 131 F.2d 491.

7. Review

Under this section authorizing acquisition by condemnation of land needed to provide public works essential to health, safety and welfare of defense workers, a judgment of condemnation which determined after a trial that United States had title to and was entitled to possession of land was a "final judgment" and hence appealable, notwithstanding issue of compensation remained to be determined. Puerto Rico Ry. Light & Power Co. v. U. S., C.C.A.Puerto Rico 1942, 131 F.2d 491.

Where it was necessary to reverse judgment in condemnation proceedings in so far as it related to personal property employed by power and light company because of absence of authority to condemn such property under this section providing for acquisition, maintenance and operation of public works necessary to health, safety and welfare of defense workers, court of appeals would not affirm that portion of judgment relating to the taking of lands and interests therein, where such action, although it would effectively dismember a going concern, would not contribute to relief of shortage in electrical transmission and distribution facilities. Id.

§ 1533. Terms to be observed in application of subchapter; restrictions against governmental supervision over schools and hospitals

(a) In carrying out this subchapter—

(1) no contract on a cost plus a percentage of cost basis shall be made, but contracts may be made on a cost plus a fixed fee basis: *Provided*, That the fixed fee does not exceed 6 per centum of the estimated cost;

(2) wherever practicable, utilization shall be made of existing private and public facilities or such facilities shall be extended, enlarged, or equipped in lieu of constructing new facilities;

(3) public works shall be maintained and operated by officers and employees of the United States only if and to the extent that local public and private agencies are, in the opinion of the Administrator, unable or unwilling to maintain or operate such public works adequately with their own personnel and under loans or grants authorized by this subchapter;

(4) public works shall be provided on the basis of need and in determining need no discrimination shall be made on account of race, creed, or color.

(b) No department or agency of the United States shall exercise any supervision or control over any school with respect to which any funds have been or may be expended pursuant to this subchapter, nor shall any term or condition of any agreement under this subchapter relating to, or any lease, grant, loan, or contribution made under this subchapter to or on behalf of, any such school, prescribe or af-

fect its administration, personnel, curriculum, instruction, methods of instruction, or materials for instruction.

(c) No department or agency of the United States shall exercise any supervision or control over any hospital or other place for the care of the sick (which is not owned and operated by the United States) with respect to which any funds have been or may be expended under this subchapter, nor shall any term or condition of any agreement under this subchapter relating to, or any lease, grant, loan, or contribution made under this subchapter to, or on behalf of, any such hospital or place, prescribe or affect its administration, personnel, or operation. Oct. 14, 1940, c. 862, Title II, § 203, as added June 28, 1941, c. 260, § 3, 55 Stat. 362, and amended 1942 Ex.Ord. No. 9070, § 1, Feb. 24, 1942, 7 F.R. 1529; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269.

Library references: War and National Defense ⇐35 et seq.; C.J.S. War and National Defense § 43 et seq.

Historical Note

Transfer of Functions. For transfer of functions under sections 1531–1534 of this title from Administrator of General Services and the General Services Administration to the Housing and Home Finance Administrator by 1950 Reorg.Plan No. 17, see note under section 1532 of this title.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3, set out as a note under former section 1403 of this title.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Effective Date of Transfer of Functions. Transfer of functions as effective July 1, 1949, see note set out under section 471 of Title 40, Public Buildings, Property, and Works.

Cross References

District of Columbia public works projects, applicability of section, see section 1562 of this title.

§ 1534. Appropriations

The sum of $530,000,000, to remain available until expended, is authorized to be appropriated to carry out the purposes of this subchapter and for administrative expenses in connection therewith, including personal services and rent in the District of Columbia and elsewhere, printing and binding, and purchase, repair, operation, and

maintenance of motor-propelled passenger-carrying vehicles. Oct. 14, 1940, c. 862, Title II, § 204, as added June 28, 1941, c. 260, § 3, 55 Stat. 363, and amended Jan. 21, 1942, c. 14, § 5, 56 Stat. 12; July 15, 1943, c. 240, 57 Stat. 565; July 3, 1945, c. 264, § 1, 59 Stat. 383.

Historical Note

1945 Amendment. Act July 3, 1945, substituted "$530,000,000" for "$500,000,000".

1943 Amendment. Act July 15, 1943 substituted "$500,000,000" for "$300,000,000".

1942 Amendment. Act Jan. 21, 1942 substituted "$300,000,000" for "$150,000,000".

Limitation On Use Of Funds. Act July 15, 1943, amended by Act July 3, 1945 provided in part: "That none of such funds shall be used for loans, grants, or contributions for the operation of day care or extended school services for children of mothers employed in war areas if and when the War-Area Child-Care Act of 1943 (S. 1130, Seventy-eighth Congress, first session) becomes law: Provided further, That no grant, loan, or contribution for the maintenance or operation of public schools in any State shall be made without prior consultation with the State department of education and the United States Office of Education: Provided further, That (a) none of the funds authorized herein shall be used to acquire public works already operated by public or private agencies, except where funds are allotted for substantial additions or improvements to such public works and with the consent of the owners thereof, and (b) the total amount allocated for contributions to public and private agencies for the maintenance and operation of public works after July 1, 1943, shall not exceed $120,000,000."

Additional Appropriations. Acts Apr. 25, 1945, c. 95, Title I, 59 Stat. 80; July 3, 1945, c. 264, § 3, 59 Stat. 383, provided an additional amount of $20,000,000 for execution of functions provided for by sections 1531–1534 and 1541 of this title, to remain available during the continuance of the unlimited national emergency declared by the President on May 27, 1941, but not to be available for obligation for new projects after June 30, 1946, of which amount not to exceed $800,000 shall be available for administrative expenses, including the objects specified under the head "Defense public works (community facilities)" in the Second Deficiency Appropriation Act, 1941 [Act July 3, 1941, c. 273, 55 Stat. 541] and the Joint Res. approved Dec. 23, 1941 (Public Law 371) [Act Dec. 23, 1941, c. 621, 55 Stat. 855]; provided, that the limitation of $80,000,000 under this head in the First Supplemental Appropriation Act, 1945 [Act Mar. 31, 1945, c. 47, 59 Stat. 46], on the total amount that may be allocated for contributions to public and private agencies for the maintenance and operation of public works after July 1, 1943, is increased to $85,000,000; and provided further, that in making allocations out of the funds appropriated for construction projects priority shall be given to emergency projects involving an estimated cost to the Federal Government of less than $250,000.

For supplemental appropriations, see notes under section 1523 of this title.

Notes of Decisions

Consent of owners 2
Implied consent 3
Public works 1

Library references
United States ⇨85.
C.J.S. United States § 123.

1. Public works

1943 amendment to Lanham Act, set out as a note under this section, which provided that none of funds authorized therein should be used to acquire public works already operated by public or private agencies, except where funds were allotted for substantial additions or improvements to such public works and with consent of the owners thereof, explicitly authorized the condemnation of sewers and sewage facilities, subject to conditions stated. U. S. v. Certain Parcels of Land in Fairfax County, Com. of Va., 1953, 73 S.Ct. 693, 345 U.S. 344, 97 L.Ed. 1061, rehearing denied 73 S.Ct. 936, 345 U.S. 960, 97 L.Ed. 1380.

In 1943 amendment to Lanham Act, set out as a note under this section, which provided that none of funds authorized therein shall be used to acquire public

works already operated by public or private agencies, except with consent of the owners thereof, requirement of consent of owners does not bar acquisitions by condemnation; and by such construction all statutory terms are given effect. Id.

Where realty company developed a residential subdivision and installed a complete and adequate sewer system, such system was a "public works" within provision of this section requiring allotment of sums and consent of owners before condemnation of such property. U. S. v. Certain Parcels of Land in Fairfax County, D.C.Va.1951, 101 F.Supp. 172, affirmed 196 F.2d 657, reversed on other grounds 73 S.Ct. 693, 345 U.S. 344, 97 L. Ed. 1061, rehearing denied 73 S.Ct. 936, 345 U.S. 960, 97 L.Ed. 1380.

2. Consent of owners

Under 1943 amendment to Lanham Act, set out as a note under this section, providing that none of funds authorized therein should be used to acquire public works already operated by public or private agencies, except with consent of the owners thereof, owners of residential lots who had been granted easements of user in sewage system by fee owner of system, were not "owners" of the system from whom the Government would have to obtain consent to condemnation. U. S. v. Certain Parcels of Land in Fairfax County, Com. of Va., 1953, 73 S.Ct. 693, 345 U.S. 344, 97 L.Ed. 1061, rehearing denied 73 S.Ct. 936, 345 U.S. 960, 97 L.Ed. 1380.

Under section 1531 et seq. of this title, authorizing condemnation of land by the United States for public works in areas of defense activity, Government could not condemn existing sewer system in subdivision without consent of owners undertaking to increase facilities for housing defense workers. U. S. v. Certain Parcels of Land in Fairfax County, C.A.Va.1952, 196 F.2d 657, reversed on other grounds 73 S.Ct. 693, 345 U.S. 344, 97 L.Ed. 1061, rehearing denied 73 S.Ct. 936, 345 U.S. 960, 97 L.Ed. 1380.

Under section 1531 et seq. of this title, authorizing condemnation of land by the United States for public works in areas of defense activity, and note under this section requiring owners' consent, realty corporations' consent to condemnation of existing sewer system upon condition, which Government was unwilling to accept, that there be no maintenance or assessment charges against any lot was insufficient to permit condemnation. Id.

3. Implied consent

Where Government, under Lanham Act, section 1521 et seq. of this title, and 1943 amendment thereto, set out as a note under this section, condemned sewage system in which residential lot owners had been granted easements of user by fee owner, promise made by fee owner during negotiations prior to condemnation to accept nominal compensation on condition that final order would protect lot owners against any future charges in use of system was an implied consent which could not be characterized as conditional. U. S. v. Certain Parcels of Land in Fairfax County, Com. of Va., 1953, 73 S.Ct. 693, 345 U.S. 344, 97 L.Ed. 1061, rehearing denied 73 S.Ct. 936, 345 U.S. 960, 97 L.Ed. 1380.

§ 1535. Contributions for the maintenance and operation of certain school facilities

Historical Note

Codification. Section, Act Oct. 14, 1940, c. 862, Title II, § 205, as added June 26, 1946, c. 498, 60 Stat. 314, authorized, for the fiscal year ending June 30, 1947, contributions for the operation and maintenance of school facilities in order to enable school authorities that were still over-burdened with war-incurred school enrollments to meet their needs during transition from war to peacetime conditions.

§ 1536. Transference of projects or facilities to departments or agencies requesting same

The Administrator is authorized without regard to any other provisions of law to transfer without reimbursement any project or fa-

cility, or part thereof, constructed or provided under this subchapter (including any personal property related to such project or facility), to any other department or agency, whenever the head of such department or agency so requests after determining that such project or facility is required for the continued operation of or is an integral part of a project or facility under the jurisdiction of such department or agency. July 31, 1953, c. 302, Title I, § 101, 67 Stat. 305.

Library references: War and National Defense ⇐38; C.J.S. War and National Defense § 46.

Historical Note

Codification. Section was enacted as a part of the First Independent Offices Appropriation Act, 1954, and not as a part of the Lanham Act which comprises this chapter.

Section was not repeated by the Independent Offices Appropriation Act, 1955, Act June 24, 1954, c. 359, 68 Stat. 272.

SUBCHAPTER IV.—GENERAL PROVISIONS AFFECTING SUBCHAPTERS II–VII

Historical Note

Codification. Former sections 4–14 of Act Oct. 14, 1940, c. 862, 54 Stat. 1127 (classified to sections 1541–1551 of this title) were designated "Title III" of that Act and renumbered to be sections 301–311 thereof, respectively, by Act June 28, 1941, c. 260, § 4(a), 55 Stat. 363.

§ 1541. Termination of subchapters II–VII; saving clause

When the President shall have declared that the emergency declared by him on September 8, 1939, has ceased to exist (a) the authority contained in sections 1521, 1532, 1561, and 1562 of this title shall terminate except with respect to contracts on projects previously entered into or undertaken and court proceedings then pending, and (b) property acquired or constructed under subchapters II–VII of this chapter (including schools and hospitals) shall be disposed of as promptly as may be advantageous under the circumstances and in the public interest. Oct. 14, 1940, c. 862, Title III, § 301, formerly § 4, 54 Stat. 1127, renumbered and amended June 28, 1941, c. 260, § 4(a), 55 Stat. 363; Apr. 10, 1942, c. 239, § 1, 56 Stat. 212.

Historical Note

1942 Amendment. Act Apr. 10, 1942 inserted references to sections 1561 and 1562 of this title.

1941 Amendment. Act June 28, 1941 inserted reference to section 1532 of this title.

Continuation of Provisions Until July 1, 1953. Section 1(a) (12) of Joint Res. July 3, 1952, c. 570, 66 Stat. 332, as amended by Joint Res. Mar. 31, 1953, c. 13, § 1, 67 Stat. 18, provided that this section should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc. No. 2914, 15 F.R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond July 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

Repeal of Prior Acts Continuing Section. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940, in such subchapters, apparently functions under sections 1562 and 1563 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No.9070, § 1, Feb. 24, 1942, 7 F.R. 1529; 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; and 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269, referred to in notes under section 1542 of this title.

Notes of Decisions

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1. Disposition of property

Under this chapter authorizing the condemnation of lands to provide housing for persons engaged in national defense activities the Administrator is under the duty to consider and exercise his best discretion in the public interest in both acquiring and disposing of the property. Lewis v. U. S., C.A.Cal.1952, 200 F.2d 183, certiorari denied 73 S.Ct. 647, 345 U.S. 907, 97 L.Ed. 1343.

2. Breach of contract

Purchasers of surplus war housing project could not recover damages for Government's breach of sale contract by nondelivery of deed on agreed date for closing sale, which was postponed because of opposition thereto by powerful influential groups and officials, with result that suits challenging sale were filed on such date, but were entitled to recover rents collected by Government thereafter, less maintenance and collection costs. Levin v. U. S., 1955, 128 F.Supp. 144, 130 Ct.Cl. 398.

§ 1542. Transfer of funds from other Federal agencies to Administrator

Where any Federal agency has funds for the provision of housing in connection with national-defense activities it may, in its discretion, make transfers of those funds, in whole or in part, to the Administrator, and the funds so transferred shall be available for, but only for, any or all of the objects and purposes of and in accordance with all the authority and limitations contained in subchapters II–VII of this chapter, and for administrative expenses in connection therewith. Oct. 14, 1940, c. 862, Title III, § 302, formerly § 5, 54 Stat. 1127, renumbered June 28, 1941, c. 260, § 4(b), 55 Stat. 363, and amended Ex.Ord.No.9070, § 1, Feb. 24, 1942, 7 F.R. 1529; 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269.

Historical Note

Transfer of Functions. For transfer of functions under subchapter III of this chapter (sections 1531–1534 of this title) from Administrator of General Services and General Service Administration to Housing and Home Finance Ad-

ministrator by 1950 Reorg.Plan No. 17, see note set out under section 1532 of this title.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3. See note set out under section 1521 of this title.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees. Such functions included functions under sections 1531–1534 of this title.

Functions under this section were transferred to Housing and Home Finance Administrator by 1947 Reorg.Plan No. 3, set out in note under section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940, set out in such subchapters, apparently functions under sections 1562 and 1563 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No. 9070; 1947 Reorg.Plan No. 3, and 1950 Reorg.Plan No. 17, referred to in notes above.

§ 1543. Disposition of moneys from rentals, operation and disposition of property, etc.; availability; establishment of reserves; limitation on, and termination of, reserves

(a) Moneys derived from rental or operation of property acquired or constructed under the provisions of subchapters II–VII of this chapter, of Public Laws Numbered 9 (Act March 1, 1941, c. 9, 55 Stat. 14), 73 (Act May 24, 1941, c. 132, 55 Stat. 197), and 353 (Act Dec. 17, 1941, c. 591, 55 Stat. 810), Seventy-seventh Congress, and of section 201 of the Second Supplemental National Defense Appropriation Act, 1941, as amended (Act Sept. 9, 1940, c. 717, 54 Stat. 883), shall be available for expenses of operation and maintenance and expenses found necessary in the disposition of any such property or the removal of temporary housing by the Administrator, including the establishment of necessary reserves therefor and administrative expenses in connection therewith: *Provided,* That moneys derived by the Administrator from the rental or operation of any such property may be deposited in a common fund account or accounts in the Treasury: *And provided further,* That except for necessary reserves authorized by subchapters II–VII of this chapter or by section 201 of the Second Supplemental National Defense Appropriation Act, 1941, as amended (Act Sept. 9, 1940, c. 717, 54 Stat. 883), the unobligated balances of the moneys deposited into the Treasury from the rental or operation of such property shall be covered at the end of each fiscal year into miscellaneous receipts: *And provided further,* That

moneys derived from the rental and operation of such property and funds from the reserve account established by the Administrator pursuant to this section, not exceeding in the aggregate $10,000,000, shall be available and may be used by the Administrator for expenses found necessary in the provision of stopgap emergency housing in the Portland, Oregon-Vancouver, Washington, area for persons and families displaced as the result of the destruction of the temporary housing at Vanport in Multnomah County, Oregon, and other persons and families in such area rendered homeless as a result of the present flood, and in providing such stopgap emergency housing the Administrator may act without regard to section 5 of Title 41.

(b) Moneys derived by the Housing and Home Finance Administrator from the disposition of property, or from the removal of temporary housing, acquired or constructed under the provisions of subchapters II–VII of this chapter, of Public Laws Numbered 9, 73, and 353, Seventy-seventh Congress, and of section 201 of the Second Supplemental National Defense Appropriation Act, 1941, as amended, shall be available for expenses of disposition and removal, including the establishment of necessary reserves therefor and administrative expenses in connection therewith: *Provided*, That moneys derived by said Administrator from the disposition of any such property or the removal of any such temporary housing may be deposited in a common fund account or accounts in the Treasury: *And provided further*, That except for necessary reserves authorized by subchapters II–VII of this chapter or by section 201 of the Second Supplemental National Defense Appropriation Act, 1941, as amended, the unobligated balances of the moneys deposited into the Treasury from the disposition of any such property or the removal of any such temporary housing shall be covered at the end of each fiscal year into miscellaneous receipts.

(c) Moneys in the reserve account established by the Housing and Home Finance Administrator pursuant to subsections (a) and (b) of this section shall not exceed $25,000,000 at any time: *Provided*, That all moneys in said account shall be covered into miscellaneous receipts not later than two years after the President shall have declared that the emergency declared by him on September 8, 1939, has ceased to exist. Oct. 14, 1940, c. 862, Title III, § 303, formerly § 6, 54 Stat. 1127, renumbered June 28, 1941, c. 260, § 4(b), 55 Stat. 363, and amended Ex.Ord.No.9070, § 1, Feb. 24, 1942, 7 F.R. 1529; July 7, 1943, c. 196, § 3, 57 Stat. 388; Feb. 18, 1946, c. 30, Title I, § 101, 60 Stat. 9; 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 11, 1948, c. 448, 62 Stat. 356; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269.

Library references: War and National Defense ⇨212; C.J.S. War and National Defense § 145.

Historical Note

References in Text. Public Laws Numbered 9, 73, and 353, Seventy-seventh Congress, and of section 201 of the Second Supplemental National Defense Appropriation Act, 1941, as amended, referred to in subsecs. (a) and (b), refer to the following Acts respectively: Public Law Number 9, Urgent Deficiency Appropriation Act, 1941, Act Mar. 1, 1941, c. 9, 55 Stat. 14, classified to sections 721–728 note of Title 15, Commerce and Trade, and section 1523 note of this title; Public Law No. 73, Additional Urgent Deficiency Appropriation Act, 1941, Act May 24, 1941, c. 132, 55 Stat. 197, classified to section 1523 note of this title; Public Law No. 353, Third Supplemental National Defense Appropriation Act, 1942, Act Dec. 17, 1941, c. 591, 55 Stat. 810, classified to section 222 of Title 5, Executive Departments and Government Officers and Employees, sections 411–419 note of Title 22, Foreign Relations and Intercourse, section 41 note of Title 24, Hospitals, Asylums, and Cemeteries, section 529h of Title 31, Money and Finance, and section 1523 note of this title; and section 201 of the Second Supplemental National Defense Appropriation Act, 1941, as amended, Act Sept. 9, 1940, c. 717, 54 Stat. 875, classified to section 1152 of the Appendix to Title 50, War and National Defense.

Reference to section 5 of Title 41 in subsec. (a) deemed reference to section 252(c) of Title 41, see section 260(b) of Title 41, Public Contracts.

1948 Amendment. Subsec. (a). Act June 11, 1948 added last proviso.

1946 Amendment. Subsec. (a). Act Feb. 18, 1946, designated existing provisions as subsec. (a).

Subsecs. (b), (c). Act Feb. 18, 1946 added subsecs. (b) and (c).

1943 Amendment. Act July 7, 1943 expanded scope of section and added two provisos at end.

Transfer of Functions. For transfer of functions under subchapter III of this chapter (sections 1531–1534 of this title) from Administrator of General Services and General Service Administration to Housing and Home Finance Administrator by 1950 Reorg.Plan No. 17, see note set out under section 1532 of this title.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3. See note set out under section 1521 of this title.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees. Such functions included functions under sections 1531–1534 of this title.

Functions under this section were transferred to Housing and Home Finance Administrator by 1947 Reorg.Plan No. 3, set out in note under former section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940, set out in such subchapters, apparently functions under sections 1562 and 1563 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No. 9070; 1947 Reorg.Plan No. 3, and 1950 Reorg.Plan No. 17, all referred to in notes above.

Termination Of War And Emergencies. Joint Res. July 25, 1947, c. 327, § 3, 61 Stat. 451, provided that in the interpretation of the proviso of subsec. (c) of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

Congressional Comment: For legislative history and purpose of Act Feb. 18, 1946, see 1946 U.S.Code Cong.Service, p. 1059.

§ 1544. Power of Administrator to manage, convey, etc., housing properties

Notwithstanding any other provisions of law, whether relating to the acquisition, handling, or disposal of real or other property by the United States or to other matters, the Administrator, with respect to any property acquired or constructed under the provisions of subchapters II–VII of this chapter, is authorized by means of Government personnel, selected qualified private agencies, or public agencies (a) to deal with, maintain, operate, administer, and insure; (b) to pursue to final collection by way of compromise or otherwise, all claims arising therefrom; (c) to rent, lease, exchange, sell for cash or credit, and convey the whole or any part of such property and to convey without cost portions thereof to local municipalities for street or other public use: *Provided*, That any such transaction shall be upon such terms, including the period of any lease, as may be deemed by the Administrator to be in the public interest: *Provided further*, That the Administrator shall fix fair rentals, on projects developed pursuant to subchapters II–VII of this chapter, which shall be based on the value thereof as determined by him, with power during the emergency, in exceptional cases, to adjust the rent to the income of the persons to be housed, and that rentals to be charged for Army, Air Force, and Navy personnel shall be fixed by the Departments of the Army, Air Force, and Navy: *Provided further*, That any lease authorized hereunder shall not be subject to the provisions of section 303b of Title 40. As used in this section the term "local municipalities" shall include the District of Columbia. Oct. 14, 1940, c. 862, Title III, § 304, formerly § 7, 54 Stat. 1127, renumbered June 28, 1941, c. 260, § 4(b), 55 Stat. 363, and amended Jan. 21, 1942, c. 14, § 6, 56 Stat. 12; Ex.Ord.No. 9070, § 1, Feb. 24, 1942, 7 F.R. 1529; Apr. 10, 1942, c. 239, § 2, 56 Stat. 212; 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269.

Historical Note

Codification. The Department of the Air Force was inserted to conform to section 207(a), (f) of Act July 26, 1947, c. 343, Title II, 61 Stat. 502 and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App.B (129)], July 29, 1949. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1947. Sections 205(a) and 207(a) (f) of Act July 26, 1947 were repealed by section 53 of Act Aug. 10, 1956, c. 1041, 70A Stat. 641. Section 1 of Act Aug. 10, 1956 enacted "Title 10, Armed Forces", which in sections 3011–3013 and 8011–8013 continued the military Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

1942 Amendments. Act Apr. 10, 1942 added last sentence.

Act Jan. 21, 1942 amended second proviso.

Transfer of Functions. For transfer of functions under subchapter III of this

chapter (sections 1531–1534 of this title) from Administrator of General Services and General Service Administration to Housing and Home Finance Administrator by 1950 Reorg.Plan No. 17, see note set out under section 1532 of this title.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3. See note set out under section 1521 of this title.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees. Such functions included functions under sections 1531–1534 of this title.

Functions under this section were transferred to Housing and Home Finance Administrator by 1947 Reorg.Plan No. 3, set out in note under former section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Subchapter II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940, set out in such subchapters, apparently functions under sections 1562 and 1563 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No. 9070; 1947 Reorg.Plan No. 3, and 1950 Reorg.Plan No. 17, all referred to in notes above.

Cross References

Occupancy of government housing facilities by members of uniformed services and their dependents, see section 403(e) of Title 37, Pay and Allowances of the Uniformed Services.

Notes of Decisions

Library references
War and National Defense ⇐241.
C.J.S. War and National Defense § 185.

1. Delays

Where contract for the construction of certain federal housing cautioned contractor to ascertain whether work as shown on drawings or specifications varied from requirements of city or utility companies to extent that permission to connect with their lines or services might be refused and in such case that contractor should not proceed further with that part of work until instructed to do so, it was incumbent upon contractor to consider such condition as it calculated all other factors of cost before entering into contract, hence contractor could not recover for delay occasioned by order to suspend plumbing work until housing authority effected a settlement of city's objections to plumbing specifications. George H. Evans & Co. v. U. S., C.A.Pa.1948, 169 F.2d 500.

2. Breach of contract

Purchasers of surplus war housing project could not recover damages for Government's breach of sale contract by nondelivery of deed on agreed date for closing sale, which was postponed because of opposition thereto by powerful influential groups and officials, with result that suits challenging sale were filed on such date, but were entitled to recover rents collected by Government thereafter, less maintenance and collection costs. Levin v. U. S., 1955, 128 F. Supp. 144, 130 Ct.Cl. 398.

3. Dismissal

Complaint that it was the allegedly improper orders of defendant governmental agencies which caused plaintiff to incur the additional expense sought to be recovered was not dismissible on the ground of sovereign immunity on the theory that the United States, and not the agency defendants, was really the defendant. George H. Evans & Co. v. U. S., C.A.Pa.1948, 169 F.2d 500.

§ 1545. Utilization of Federal and local agencies and private services; conformity of projects to local planning

In carrying out the provisions of subchapters II–VII of this chapter the Administrator is authorized to utilize and act through the Housing and Home Finance Agency and other Federal agencies and any local public agency, with the consent of such agency, and any funds appropriated pursuant to subchapters II–VII of this chapter shall be available for transfer to any such agency in reimbursement therefor. Nothing in subchapters II–VII of this chapter shall be construed to prevent the Administrator from employing or utilizing the professional services of private persons, firms, or corporations. Consultation shall be had with local public officials and local housing authorities to the end that projects constructed under the provisions of subchapters II–VII of this chapter shall, so far as may be practicable, conform in location and design to local planning and tradition. Oct. 14, 1940, c. 862, Title III, § 305, formerly § 8, 54 Stat. 1127, renumbered June 28, 1941, c. 260, § 4(b), 55 Stat. 363, and amended Jan. 21, 1942, c. 14, § 7, 56 Stat. 12; Ex.Ord. No. 9070, § 1, Feb. 24, 1942, 7 F.R. 1529; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269.

Historical Note

1942 Amendment. Act Jan. 21, 1942 added last sentence.

Transfer of Functions. For transfer of functions under subchapter (sections 1531–1534 of this title) from Administrator of General Services and General Service Administration to Housing and Home Finance Administrator by 1950 Reorg.Plan No. 17, see note set out under section 1532 of this title.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3. See note set out under section 1521 of this title.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees. Such functions included functions under sections 1531–1534 of this title.

Functions under this section were transferred to Housing and Home Finance Administrator by 1947 Reorg.Plan No. 3, set out in note under former section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord. No. 9070.

Effective Date of Transfer of Functions. Transfer of functions by Act June 30, 1949 as effective July 1, 1949, see note set out under section 471 of Title 40, Public Buildings, Property, and Works.

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940, set out in such subchapters, apparently functions under sections 1562 and 1563 of this title, which constitute

parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No.9070; 1947 Reorg.Plan No. 3, and 1950 Reorg.Plan No. 17, all referred to in notes above.

Notes of Decisions

1. Consultation with local officials

Provision of this section requiring former Federal Works Administrator, constructing housing units for persons engaged in national defense activities, to consult with local public officials and local housing authorities to end that projects constructed by Administrator should, as far as might be practicable, conform to local planning, was not violated simply because nothing definite was accomplished by consultations which took place. U. S. v. City of Chester, C.C.A.Pa.1944, 144 F.2d 415.

In action by United States to enjoin city and its officials from interfering with construction of housing units for war workers, evidence was insufficient to establish that former Administrator failed to consult with local officials and local housing authorities as provided in this section authorizing construction of housing units. U. S. v. City of Philadelphia, D.C.Pa.1944, 56 F.Supp. 862, affirmed 147 F.2d 291, certiorari denied 65 S.Ct. 1410, 325 U.S. 870, 89 L.Ed. 1989.

Provision of this section requiring former Federal Works Administrator constructing housing units for persons engaged in national defense activities, to consult with local public officials and local housing authorities indicates a desire to comply with but not to be bound inflexibly by local zoning ordinance. Tim v. City of Long Branch, 1947, 53 A. 2d 164, 135 N.J.L. 549, 171 A.L.R. 320.

§ 1546. Payment of annual sums to local authorities in lieu of taxes

The Administrator shall pay from rentals annual sums in lieu of taxes to any State and/or political subdivision thereof, with respect to any real property acquired and held by him under subchapters II–VII of this chapter, including improvements thereon. The amount so paid for any year upon such property shall approximate the taxes which would be paid to the State and/or subdivision, as the case may be, upon such property if it were not exempt from taxation, with such allowance as may be considered by him to be appropriate for expenditure by the Government for streets, utilities, or other public services to serve such property. As used in this section the term "State" shall include the District of Columbia. Oct. 14, 1940, c. 862, Title III, § 306, formerly § 9, 54 Stat. 1127, renumbered and amended June 28, 1941, c. 260, § 4(b), 55 Stat. 363; Jan. 21, 1942, c. 14, § 8, 56 Stat. 12; Ex.Ord.No.9070, § 1, Feb. 24, 1942, 7 F.R. 1529; Apr. 10, 1942, c. 239, § 3(a), 56 Stat. 212; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269.

Historical Note

Codification. Words "including any territory or possession of the United States" appearing in text prior to amendment by Act Jan. 21, 1942 were inserted upon authority of section 4(b) of Act June 28, 1941 which provided that when

used in this section the term " 'State' included any territory or possession of the United States."

1942 Amendments. Act Apr. 10, 1942 added last sentence.

Act Jan. 21, 1942 amended section generally.

Transfer of Functions. For transfer of functions under subchapter III of this chapter (sections 1531–1534 of this title) from Administrator of General Services and General Service Administration to Housing and Home Finance Administrator by 1950 Reorg.Plan No. 17, see note set out under section 1532 of this title.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3. See note set out under section 1521 of this title.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees. Such functions included functions under sections 1531–1534 of this title.

Functions under this section were transferred to Housing and Home Finance Administrator by 1947 Reorg.Plan No. 3, set out in note under former section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940, set out in such subchapters, apparently functions under sections 1562, and 1563 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No.9070, 1947 Reorg.Plan No. 3, and 1950 Reorg.Plan No. 17, all referred to in notes above.

Notes of Decisions

1. Purpose

Purpose of this section directing Public Housing Administrator to remit to local authorities money which shall approximate tax payment to which Public Housing property would be subject in a nonexempt capacity, is to equalize tax treatment between sovereign and private property owners similarly situated. Mayor and Council of New Castle v. U. S., D.C.Del.1958, 162 F.Supp. 59.

2. Valuation basis

Under lease by United States of land for housing adjacent to its own highly developed housing project, providing that taxes should be paid by lessee in amount based upon ratio of value of lessee's land to that of project as a whole, both values to be established by lessor, valuation based upon reproduction cost and capitalization of income, without giving too much weight to amounts actually expended in development of the project, was not arbitrary or unreasonable, where it appeared that housing project was a relief project undertaken to provide work for unemployed and amount of money expended upon it was unreasonably large. Parkbelt Homes v. U. S., C.A.Md. 1948, 171 F.2d 230.

3. Annual rental value

Where portion of land was condemned by the United States for a defense housing project but only exclusive use for one year with right to renew use from

year to year was taken, any increased assessments for years following year of taking on land not taken by the Government but the result of the taking of the portion were not a proper element to be considered in determining annual rental value as of date of taking. U. S. v. 14.4756 Acres of Land in Christiana Hundred, New Castle County, D.C.Del. 1947, 71 F.Supp. 1005.

Inclusion in annual rental value of damages for any failure of the United States to restore property to its former condition would be improper because such damages prior to termination of occupancy would be speculative and ascertainment of such damages prior to termination would be unfair to every interest. Id.

Cost of hook-up under temporary permit to city water main and cost of water rent, resulting from taking of land and cutting off of owner's water supply to land not taken, were not proper elements to be considered in determining annual rental value of the land taken. Id.

4. Easement, value of

Where the United States acquired from borough by condemnation an easement to connect with sewer as part of defense housing project, and the United States paid borough an annual amount in lieu of taxes as authorized by this section, the borough was not entitled to recover the present worth of a sum sufficient to reimburse borough for the proportionate share of the United States in the annual cost of pumping sewage, such expenses being normally included by the borough in taxes. Munhall Borough v. U. S., C.C.A.Pa.1947, 159 F. 2d 603.

5. Computation

Under lease by United States of land for housing adjacent to its own highly developed housing project providing that taxes should be paid by lessee in an amount based upon ratio of value of lessee's land to that of project as a whole both values to be established by lessor, computation of taxes by lessor was not unreasonable where they amounted to less than $1,000 per year on a valuation of over $26,000 for lessee's property and included three separate local tax rates in highly taxed residential area. U. S. v. Parkbelt Homes, D.C.Md.1948, 76 F. Supp. 297, affirmed 171 F.2d 230.

6. Deductions

Under this section directing Public Housing Administrator, in essence, to remit to local authorities money which shall approximate tax payment to which Public Housing would be subject in a nonexempt capacity and permitting Administrator to make appropriate allowance for sums expended by Government for streets, utilities or other public services, allowance for such services was for capital expenditures and not for maintenance costs and Government was not entitled to deduct from payments made to city in lieu of taxes covering housing project located in city, amounts expended for street maintenance and lighting of streets within government housing project. Mayor and Council of New Castle v. U. S., D.C.Del.1958, 162 F.Supp. 59.

7. Underpayments

Complaint of municipality for a money judgment to which it allegedly was entitled because Federal Government made an underpayment in lieu of taxes within meaning of this section, stated a cause of action under the section, and under the Tucker Act, section 1346(a) (2) of Title 28. Mayor and Council of New Castle v. U. S., D.C.Del.1957, 162 F.Supp. 243.

8. Enrollment in state schools

A board of education for city school district was not obliged to enroll in its schools minor children living with their parents in housing projects owned by Federal Government within school district, which were constructed under provisions of section 1521 et seq. of this title, without payment of taxes, tuition or any other sums in lieu thereof. State ex rel. Moore v. Board of Education of Euclid City School Dist., Ohio App.1944, 57 N.E.2d 118.

9. Discretion of Administrator

Although this section affords the Public Housing Administrator considerable latitude in his determination of the amount of payments to be made to municipalities in lieu of taxes, the section does not vest absolute discretion in the Administrator. Mayor and Council of New Castle v. U. S., D.C.Del.1957, 162 F. Supp. 243.

Determination of amount of mandatory payments under this section was not completely within discretion of Public Housing Administrator and therefore court, under the Tucker Act, section 1346(a) (2) of Title 28, had jurisdiction

of action by city for payments allegedly due. Id.

10. Jurisdiction of state courts

The Court of Appeals was without jurisdiction to determine whether proper construction of section 1546 et seq. of this title, authorizing federal housing projects, required payment by former Federal Public Housing Authority of sums "approximating taxes" on the projects as determined from valuation fixed by county auditor on his duplicates. State ex rel. Moore v. Board of Education of Euclid City School Dist., Ohio App.1944, 57 N.E.2d 118.

11. Good faith

Where lease by United States of land for housing adjacent to its own highly developed housing project provided that taxes should be paid by lessee in amount based upon ratio of value of lessee's land to that of project as a whole, both values to be established by lessor, values as fixed by lessor were binding on both parties in absence of fraud or bad faith, and court would not be justified in substituting its judgment for that of lessor in making the valuation. Parkbelt Homes v. U. S., C.A.Md.1948, 171 F.2d 230.

12. Interest

Where it did not appear that defendant's deposit with Reconstruction Finance Corporation under terms of its mortgage was either payment or tender to the United States pursuant to terms of lease sued on by United States, deposit did not relieve defendant from liability for interest pursuant to terms of lease sued on. Parkbelt Homes v. U. S. C.A.Md.1948, 171 F.2d 230.

§ 1547. Preservation of local civil and criminal jurisdiction and civil rights

Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to subchapters II–VII of this chapter shall not deprive any State or political subdivision thereof, including any Territory or possession of the United States, of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property. As used in this section the term "State" shall include the District of Columbia. Oct. 14, 1940, c. 862, Title III, § 307, formerly § 10, 54 Stat. 1128, renumbered and amended June 28, 1941, c. 260, § 4(b), 55 Stat. 363; Ex.Ord.No.9070, § 1, Feb. 24, 1942, 7 F.R. 1529; Apr. 10, 1942, c. 239, § 3(b), 56 Stat. 212; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269.

Historical Note

Codification. Words "including any Territory or possession of the United States" were inserted upon authority of section 4(b) of Act June 28, 1941, which provided that when used in this section the term " 'State' includes any Territory or possession of the United States."

1942 Amendment. Act Apr. 10, 1942 added last sentence.

Transfer of Functions. For transfer of functions under subchapter (sections 1531–1534 of this title) from Administrator of General Services and General Service Administration to Housing and Home Finance Administrator by 1950 Reorg. Plan No. 17, see note set out under section 1532 of this title.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3. See note set out under section 1521 of this title.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees. Such functions included functions under sections 1531–1534 of this title.

Functions under this section were transferred to Housing and Home Finance Administrator by 1947 Reorg. Plan No. 3, set out in note under former section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940, set out in such subchapters, apparently functions under sections 1562 and 1563 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No.9070; 1947 Reorg.Plan No. 3, and 1950 Reorg.Plan No. 17, all referred to in notes above.

Notes of Decisions

Library references

War and National Defense ⇐61.
C.J.S. War and National Defense § 62.

1. Construction

Provision of section 1521(b) of this title authorizing Administrator to construct housing units for war workers without regard to municipal building regulations is not in irreconcilable conflict with provision of this section that acquisition by Administrator of real property shall not deprive any state or political subdivision thereof of its criminal or civil jurisdiction in and over such property. U. S. v. City of Chester, C.C.A.Pa.1944, 144 F.2d 415.

2. Civil rights

The term "civil rights" as used in this section is broad enough to and does include "political rights" such as the right to vote. State ex rel. Parker v. Corcoran, 1942, 128 P.2d 999, 155 Kan. 722. See, also, Hammond v. Brinkman, 1952, 246 P.2d 345, 173 Kan. 406.

The phrase "civil rights", as used in this section, includes the political right of suffrage. Johnson v. Morrill, 1942, 126 P.2d 873, 20 Cal.2d 446.

3. Local regulations

Where section 1521(b) of this title authorized construction of housing units to house war workers without regard to state or municipal laws, ordinances, rules, or regulations, further provision of this section that acquisition by Administrator of real property shall not deprive any state or political subdivision thereof of its criminal or civil jurisdiction over property did not render municipal building regulations applicable to land leased by Administrator for building projects. U. S. v. City of Chester, C.C.A.Pa.1944, 144 F.2d 415.

Former Federal Public Housing Authority and the Philadelphia Housing Authority, in construction of homes for war workers, were agents and instrumentalities of the United States engaged in carrying out a governmental function and were not subject to any state or municipal building regulations notwithstanding the buildings were of a permanent character. U. S. v. City of Philadelphia, D.C.Pa.1944, 56 F.Supp. 862, affirmed 147 F.2d 291, certiorari denied 65 S.Ct. 1410, 325 U.S. 870, 89 L.Ed. 1989.

4. Jurisdiction—Exclusiveness of

If housing projects constructed by the United States for defense workers were

forts, magazines, arsenals, dockyards, or other needful buildings, within meaning of the provision of U.S.C.A.Const. Art. 1, § 8, cl. 17, giving Congress power to exercise "exclusive legislation" over such places, and Cal.Pol.Code, § 34, consenting to the purchase or condemnation of such places by the United States, then the projects were acquired by the United States with the consent of the Legislature, and the United States had "exclusive jurisdiction" over the land so acquired, the quoted terms being synonymous. Johnson v. Morrill, 1942, 126 P.2d 873, 20 Cal.2d 446.

5. —— Agreements respecting

A state and the United States may make any suitable agreement with respect to mutual or exclusive exercise of jurisdiction over land acquired by the United States within a state, or to be acquired by the United States. Johnson v. Morrill, 1942, 126 P.2d 873, 20 Cal.2d 446.

6. —— Cession

A state may cede and the United States may accept cession of jurisdiction of lands within a state on any express terms, conditions, or reservations. Johnson v. Morrill, 1942, 126 P.2d 873, 20 Cal. 2d 446.

7. —— Compulsion

The United States cannot be compelled to accept the burdens of exclusive jurisdiction of land within meaning of U.S. C.A.Const. Art. 1, § 8, cl. 17, along with title to land, where the land is acquired for purposes not strictly within the classes designated within said clause. Johnson v. Morrill, 1942, 126 P.2d 873, 20 Cal.2d 446.

8. —— Leased land

Where realty on which the United States constructed housing project for defense workers was merely leased to the United States, the land was not "purchased" within meaning of provision of U.S.C.A.Const. Art. 1, § 8, cl. 17, giving Congress power to exercise exclusive legislation over all places purchased by consent of State Legislature for erection of forts, magazines, arsenals, dockyards, and other needful buildings, nor within meaning of Cal.Pol.Code, § 34, consenting to the purchase or condemnation by the United States of such places, and the United States did not have "exclusive jurisdiction" of the realty, and hence defense worker, who resided in housing project, was entitled to register as an elector of the state in county where project was located. Johnson v. Morrill, 1942, 126 P.2d 873, 20 Cal.2d 446.

9. —— Retention

The United States may acquire land within a state by donation, purchase, or condemnation and devote it to a public use without withdrawing such lands from the jurisdiction of the state. Johnson v. Morrill, 1942, 126 P.2d 873, 20 Cal. 2d 446.

Land acquired by the United States, but which is not subject to the exclusive legislative authority of the United States under U.S.C.A.Const. Art. 1, § 8, cl. 17, remains subject to the jurisdiction of the state in matters not inconsistent with the free and effective use of the land for the purpose for which it was acquired. Id.

10. —— Voting rights

Where United States accepted exclusive jurisdiction over military lands with result that inhabitants thereof were not entitled to vote locally, but thereafter transferred lands to National Housing Agency pursuant to section 1521 et seq. of this title, effect of transfer was to restore to inhabitants thereof their voting rights. Hammond v. Brinkman, 1952, 246 P.2d 345, 173 Kan. 406.

The United States did not have "exclusive jurisdiction" over housing projects constructed for defense workers under this section providing that the acquisition of realty shall not deprive any state or political subdivision thereof of its civil or criminal jurisdiction or impair civil rights, and hence defense workers living in housing projects were entitled to register as electors of the state in counties where the housing projects were located. Johnson v. Morrill, 1942, 126 P.2d 873, 20 Cal.2d 446.

Where housing project, constructed by the United States for defense workers and enlisted men employed in national defense activities in naval reservation over which the United States had acquired exclusive jurisdiction, was not located on reservation and the buildings merely served as dwellings, and the United States Government had not sought to acquire exclusive jurisdiction over the project, the United States did not have "exclusive jurisdiction" within meaning of U.S.C.A.Const. Art. 1, § 8, cl. 17, and worker living in project was entitled to register as an elector of the state in the county where the project was located. Id.

§ 1548. Rules and regulations; standards of safety, convenience, and health

The Administrator is authorized to make such rules and regulations as may be necessary to carry out the provisions of subchapters II–VII of this chapter, and shall establish reasonable standards of safety, convenience, and health. Oct. 14, 1940, c. 862, Title III, § 308, formerly § 11, 54 Stat. 1128, renumbered June 28, 1941, c. 260, § 4(b), 55 Stat. 363, and amended Ex.Ord.No.9070, § 1, Feb. 24, 1942, 7 F.R. 1529; 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269.

Historical Note

Transfer of Functions. For transfer of functions under subchapter III of this chapter (sections 1531–1534 of this title) from Administrator of General Services and General Service Administration to Housing and Home Finance Administrator by 1950 Reorg.Plan No. 17, see note set out under section 1532 of this title.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3. See note set out under section 1521 of this title.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator, were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees. Such functions included functions under sections 1531–1534 of this title.

Functions under this section were transferred to Housing and Home Finance Administrator by 1947 Reorg.Plan No. 3, set out in note under former section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940 set out in such subchapters, apparently functions under sections 1562 and 1563 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No. 9070; 1947 Reorg.Plan No. 3, and 1950 Reorg.Plan No. 17, all referred to in notes above.

Notes of Decisions

Library references

War and National Defense ⇐38.
C.J.S. War and National Defense § 46.

1. Power of Administrator

Although former Federal Works Administrator constructing housing units for persons engaged in national defense activities and their families in areas in which acute shortage of housing exists was immune from local building restrictions and ordinances, the Administrator

was not free to construct unsafe dwellings or housing units which may be deleterious to health and welfare of a community. U. S. v. City of Chester, C.C.A. Pa.1944, 144 F.2d 415.

2. Safety and sanitation

In suit by United States to enjoin municipality and its officials from interfering with construction of emergency housing units to house war workers, where defendants alleged that the dwellings to be constructed under the project would be unsafe and unsanitary but court made no findings which would support such allegations, appellate court would assume that the dwellings would be neither unsafe nor unsanitary. U. S. v. City of Chester, C.C.A.Pa.1944, 144 F. 2d 415.

§ 1549. Laborers and mechanics; wages; preference in employment

Notwithstanding any other provision of law, the wages of every laborer and mechanic employed on any construction, repair or demolition work authorized by subchapters II–VII of this chapter shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. Not less than the prevailing wages shall be paid in the construction of defense housing authorized herein. Preference in such employment shall be given to qualified local residents. Oct. 14, 1940, c. 862, Title III, § 309, formerly § 12, 54 Stat. 1128, renumbered June 28, 1941, c. 260, § 4(b), 55 Stat. 363, and amended Jan. 21, 1942, c. 14, § 9, 56 Stat. 12; Ex.Ord.No.9070, § 1, Feb. 24, 1942, 7 F.R. 1529; 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269.

Library references: War and National Defense ⇐401 et seq., C.J.S. War and National Defense § 196.

Historical Note

1942 Amendment. Act Jan. 21, 1942 added last sentence.

Transfer of Functions. For transfer of functions under subchapter III of this chapter (sections 1531–1534 of this title) from Administrator of General Services and General Service Administration to Housing and Home Finance Administrator by 1950 Reorg.Plan No. 17, see note set out under section 1532 of this title.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3. See note set out under section 1521 of this title.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees. Such functions included functions under sections 1531–1534 of this title.

Functions under this section were transferred to Housing and Home Finance Administrator by 1947 Reorg.Plan No. 3, set out in note under former section 133y—16 of Title 5, Executive De-

partments and Government Officers and Employees.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940, set out in such subchapters, apparently functions under sections 1562 and 1563 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No. 9070; 1947 Reorg.Plan No. 3, and 1950 Reorg.Plan No. 17, all referred to in notes above.

§ 1550. Separability of provisions

If any provision of subchapters II–VII of this chapter, or the application thereof to any persons or circumstances, is held invalid, the remainder of said subchapters, or application of such provision to other persons or circumstances shall not be affected thereby. Oct. 14, 1940, c. 862, Title III, § 310, formerly § 13, 54 Stat. 1128, renumbered June 28, 1941, c. 260, § 4(b), 55 Stat. 363.

Library references: Statutes ⇐64(2); C.J.S. Statutes § 96 et seq.

Historical Note

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference, in the original, to "this Act", meaning Act Oct. 14, 1940, set out in such subchapters, apparently functions under sections 1562 and 1563 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1942 Ex.Ord.No.9070, § 1, Feb. 24, 1942, 7 F.R. 1529; 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; and 1950 Reorg. Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269. See notes under section 542 of this title.

§ 1551. Repealed. Aug. 2, 1954, c. 649, Title VIII, § 802 (b), 68 Stat. 642

Historical Note

Section, Act Oct. 14, 1940, c. 862, Title III, § 311, formerly § 14, 54 Stat. 1128, renumbered June 28, 1941, c. 260, § 4(b), 55 Stat. 363, which related to reports to Congress, is covered by section 1701o of Title 12, Banks and Banking.

§ 1552. Powers of certain agencies designated to provide temporary shelter

Any agency designated by the President to provide temporary shelter under the provisions of Public Law Numbered 9, Seventy-seventh Congress, Public Law Numbered 73, Seventy-seventh Congress, or the Third Supplemental National Defense Appropriations Act, 1942, shall have the same powers with respect to the management, maintenance, operation, and administration of such temporary shelter as are granted to the Housing and Home Finance Adminis-

trator under section 1544 and section 1546 of this title with respect to projects constructed hereunder, and the provisions of section 1547 of this title shall apply to such temporary shelter projects and the occupants thereof. Oct. 14, 1940, c. 862, Title III, § 312, as added Jan. 21, 1942, c. 14, § 10, 56 Stat. 13, and amended Ex.Ord.No.9070, § 1, Feb. 24, 1942, 7 F.R. 1529; 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269.

Library references: War and National Defense ⇨38; C.J.S. War and National Defense § 46.

Historical Note

References in Text. The three laws referred to in this section constitute Acts Mar. 1, 1941, c. 9, 55 Stat. 14; May 24, 1941, c. 132, 55 Stat. 197; and Dec. 17, 1941, c. 591, 55 Stat. 810, respectively. For distribution of these Acts in the Code, see Tables Volume.

Transfer of Functions. For transfer of functions under subchapter III of this chapter (sections 1531–1534 of this title) from Administrator of General Services and General Service Administration to Housing and Home Finance Administrator by 1950 Reorg.Plan No. 17, see note set out under section 1532 of this title.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3. See note set out under section 1521 of this title.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator were transferred to the Administrator of General Services by Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees. Such functions included functions under subchapter III of this title.

Functions under this section were transferred to Housing and Home Finance Administrator by 1947 Reorg.Plan No. 3, set out in note under section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

Functions of Federal Works Administrator relating to defense housing were consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No.9070.

Effective Date of Transfer of Functions. Transfer of functions as effective July 1, 1949, see note set out under section 471 of Title 40, Public Buildings, Property and Works.

§ 1553. Removal by Administrator of certain housing of temporary character; exceptions for local communities; report to Congress

Except as otherwise provided in subchapters II–VII of this chapter, the Administrator shall, as promptly as may be practicable and in the public interest, remove (by demolition or otherwise) all housing under his jurisdiction which is of a temporary character, as determined by him, and constructed under the provisions of this subchapter, Public Law 781, Seventy-sixth Congress, and Public Laws 9, 73, 353, Seventy-seventh Congress. Such removal shall, in any event, be accomplished not later than July 1, 1954 or by such later

date as may be required because of extensions of time in accordance with section 1584 of this title, with the exception only of such housing as the Administrator, after consultation with local communities, finds is still urgently needed because of a particularly acute housing shortage in the area: *Provided*, That all such exceptions shall be reexamined annually by the Administrator and that all such exceptions and reexaminations shall be reported to the Congress. Notwithstanding any other provisions of law except provisions of law hereafter enacted expressly in limitation hereof, no Federal statute, or regulation thereunder, shall prohibit or restrict any action or proceeding to recover possession of any housing accommodations for the purpose of carrying out the provisions of this section or section 1584 of this title. Oct. 14, 1940, c. 862, Title III, § 313, as added July 7, 1943, c. 196, § 4, 57 Stat. 388, and amended 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 28, 1948, c. 688, § 4, 62 Stat. 1064; June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Oct. 25, 1949, c. 729, § 5, 63 Stat. 906; Apr. 20, 1950, c. 94, Title II, §§ 202, 204, 64 Stat. 72, 73; 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269; Ex.Ord.No.10385, Aug. 18, 1952, 17 F.R. 7525.

Historical Note

References in Text. Public Law 781, Seventy-sixth Congress, approved Sept. 9, 1940, referred to in the text, is Act Sept. 9, 1940, c. 717, 54 Stat. 872, an Appropriation Act, and is not classified to the Code.

Public Laws 9, 73, 353 Seventy-seventh Congress, Acts Mar. 1, 1941, c. 9, 55 Stat. 14; May 24, 1941, c. 132, 55 Stat. 17; Dec. 17, 1941, c. 591, 55 Stat. 810, respectively, are Appropriation Acts and are classified in part as notes under section 1523 of this title.

1950 Amendment. Act Apr. 20, 1950 substituted "December 31, 1952 * * * in the area" for "January 1, 1951 with the exception only of, such housing as the Administrator, after consultation with local communities finds is still needed in the interest of orderly demobilization of the war effort", and added last sentence.

1949 Amendment. Act Oct. 25, 1949 substituted "January 1, 1951" for "January 1, 1950".

1948 Amendment. Act June 28, 1948 substituted "January 1, 1950" for "two years after the President declares that the emergency declared by him on September 8, 1939, has ceased to exist".

Transfer of Functions. For transfer of functions under subchapter III of this chapter (sections 1531–1534 of this title) from Administrator of General Services and General Service Administration to Housing and Home Finance Administrator by 1950 Reorg.Plan No. 17, see note set out under section 1532 of this title.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3.

All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees. Such functions included functions under sections 1531–1534 of this title.

Functions under this section were transferred to Housing and Home Finance Administrator by 1947 Reorg.Plan No. 3, set out in note under former section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

Subchapters II–VII. While this section refers to "subchapters II–VII" of this chapter because of reference in the original, to "this Act", meaning Act Oct. 14, 1940, set out in such subchapters, apparently functions under sections 1562 and 1574 of this title, which constitute parts of subchapter V of this chapter, are vested in the Administrator of General Services rather than the Housing and Home Finance Administrator. They were not included in the transfers of functions effected by 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; and 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269. See notes under section 1542 of this title.

Termination of War and Emergencies. Joint Res. July 25, 1947, c. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

Ex.Ord.No.10385. Extension of Time. Ex.Ord.No.10385, Aug. 18, 1952, affected section by extending time for the removal of temporary housing from Dec. 31, 1952 to July 1, 1954.

Legislative History: For legislative history and purpose of Act June 28, 1948, see 1948 U.S.Code Cong.Service, p. 2099. See, also, Act Apr. 20, 1950, 1950 U.S.Code Cong.Service, p. 2021.

Notes of Decisions

Damages 2
Implied promise 1

Library references

War and National Defense ⇐207.
C.J.S. War and National Defense § 138.

1. Implied promise

Plaintiff corporations, owners of residential housing projects constructed subsequent to World War II, were not entitled to recover for losses of rents and profits from Government because Government continued to rent dwelling units in war housing apartment project and this section did not imply a promise that Government constructed housing would not be permitted to compete, even temporarily, with private housing and 1946 Presidential Proclamation encouraging private enterprise to provide housing did not imply such a promise. Cherrywood Apartments v. U. S., 1951, 98 F. Supp. 577, 120 Ct.Cl. 309, certiorari denied 72 S.Ct. 291, 342 U.S. 902, 96 L.Ed. 675.

2. Damages

Where Federal Government sold temporary wartime housing to corporation and the buildings were not removed within required time and were sold to defendants, defendants were not privy to the contract and were not liable for damages for breach of contract and were not amenable to specific performance or to an equitable substitute for specific performance, and award of substituted monetary relief could not be based on net rentals received by defendants during time that Government had right to possession of land. Century Inv. Corp. v. U. S., C.A.Wash.1957, 250 F.2d 139, certiorari denied 78 S.Ct. 915, 356 U.S. 950, 2 L.Ed.2d 843.

The defendants' knowledge, when they acquired, their interests in Federal temporary wartime housing and in the land on which such housings stood, that the corporation from which they bought the buildings had a contract with the Government and that there had been a breach of the provision requiring removal of buildings by a certain time, did not permit award of damages to Government on any theory of constructive trust. Id.

A provision of contract with United States for purchase and removal of temporary wartime housing, that purchasers should be liable for full amount of damages determined by contracting officer to have resulted from breach did not make determination of damage by contracting officer a condition precedent to recovery by United States for breach of contract. Id.

SUBCHAPTER V.—DEFENSE HOUSING AND PUBLIC WORKS FOR DISTRICT OF COLUMBIA

§ 1561. Appropriation for housing of United States employees; administration; disposition of housing

(a) The sum of $30,000,000, to remain available until expended, is authorized to be appropriated for the purpose of enabling the Housing and Home Finance Agency to provide housing in or near the District of Columbia (including living quarters for single persons and for families) for employees of the United States whose duties are determined by the Housing and Home Finance Administrator to be essential to national defense and to require them to reside in or near the District of Columbia.

(b) In providing the housing for which an appropriation is authorized by subsection (a) of this section, the Housing and Home Finance Administrator is authorized to exercise all of the powers specified in subsections (a) and (b) of section 1521 of this title, subject to the limitations, upon exercise of such powers specified in such subsections.

(c) The funds authorized to be appropriated by this section shall be available to pay administrative expenses in connection with providing the housing for which such funds are authorized to be appropriated.

(d) The housing provided with funds authorized to be appropriated by this section may be sold and disposed of as expeditiously as possible: *Provided*, That in disposing of said housing consideration shall be given to its full market value and said housing or any part thereof shall not, unless specifically authorized by Congress, be conveyed to any public or private agency organized for slum clearance or to provide subsidized housing for persons of low income. Oct. 14, 1940, c. 862, Title IV, § 401, as added Apr. 10, 1942, c. 239, § 4, 56 Stat. 212, and amended 1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73.

Library references: War and National Defense ⇐201 et seq.; C.J.S. War and National Defense § 133 et seq.

Historical Note

Savings Clause. Termination of powers at end of emergency, savings clause, see section 1541 of this title.

Transfer of Functions. The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3. See note set out under section 1521 of this title.

Functions under this section were transferred to Housing and Home Finance Administrator by 1947 Reorg.Plan. No. 3, set out in note under section 133y—16 of Title 5, Executive Departments and Government Officers and Employees.

Continuation of Provisions until July 1, 1953. Section 1(a) (12) of Joint Res. July 3, 1952, c. 570, 66 Stat. 332, as amended by Joint Res. Mar. 31, 1953, c. 13, § 1, 67 Stat. 18, provided that these sections should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc.No.2914, 15 F.R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond July 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

Repeal of Prior Acts Continuing Section. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

§ 1562. Appropriations for public works projects; administration

(a) The sum of $20,000,000, to remain available until expended, is authorized to be appropriated for the purpose of enabling the Administrator of General Services to provide public works and equipment therefor in and near the District of Columbia. Such public works may include, but shall not be limited to, schools, waterworks, sewers, public sanitary facilities, works for the treatment and purification of water, hospitals and other places for the care of the sick, recreational facilities, streets, roads, facilities for the disposal of sewage, garbage, and refuse, and other types of necessary public works.

(b) In providing the public works and equipment therefor for which appropriations are authorized by subsection (a) of this section, the Administrator of General Services is authorized to exercise all of the powers specified in subsections (a), (b), and (c) of section 1532 of this title. Such public works and equipment therefor shall be provided subject to the provisions of section 1533 of this title.

(c) The funds authorized to be appropriated by this section shall be available to pay administrative expenses in connection with providing the public works and equipment therefor for which such funds are authorized to be appropriated. Oct. 14, 1940, c. 862, Title IV, § 402, as added Apr. 10, 1942, c. 239, § 4, 56 Stat. 213, and amended June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

Savings Clause. Termination of powers at end of emergency, savings clause, see section 1541 of this title.

Transfer of Functions. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees.

Effective Date of Transfer of Functions. Transfer of functions as effective July 1, 1949, see note set out under section 471 of Title 40, Public Buildings, Property, and Works.

Sections 1532 and 1533 of This Title. Functions under sections 1532 and 1533 of this title, referred to in subsec. (b), are now vested in the Housing and Home Finance Administrator. See notes under section 1532.

Continuation of Provisions until July 1, 1953. Section 1(a) (12) of Joint Res. July 3, 1952, c. 570, 66 Stat. 332, as amended by Joint Res. Mar. 31, 1953, c. 13, § 1, 67 Stat. 18, provided that these sections should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc.No.2914, 15 F.R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense or such earlier date or dates as may be provided for by Congress, but in no event beyond July 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

Repeal of Prior Acts Continuing Section. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

§ 1563. Advancements to District of Columbia Commissioners for public works; availability; reports to Congress

(a) The Commissioners of the District of Columbia are authorized to accept for the District of Columbia, and the Administrator of General Services is authorized to make to the District of Columbia, advancements for the provision of public works and equipment therefor, such advancements to be deposited with the Secretary of the Treasury to the credit of the District of Columbia.

(b) Sums advanced to the Commissioners of the District of Columbia hereunder shall be available for the provision, without reference to section 5 of Title 41, of any or all public works and equipment therefor described in section 1562 of this title, and for administrative expenses in connection therewith, including employment of engineering and other professional services and other technical and administrative personnel without reference to the civil-service requirements or the Classification Act of 1949, as amended. The repayment of any sums so advanced and the payment of interest thereon shall be in the same manner and subject to the same conditions as are set forth in sections 3 and 4 of the Act of December 20, 1941 (Public Law Numbered 362, Seventy-seventh Congress).

(c) The Commissioners shall submit with their annual estimates to the Congress a report of their activities and expenditures under this section. Oct. 14, 1940, c. 862, Title IV, § 403, as added Apr. 10, 1942, c. 239, § 4, 56 Stat. 213, and amended June 30, 1949, c. 288, Title I, § 103, 63 Stat. 380; Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972.

Historical Note

References in Text. Reference to section 5 of Title 41 in subsec. (b) deemed reference to section 252(c) of Title 41, see section 260(b) of Title 41, Public Contracts.

The Classification Act of 1949, as amended, referred to in subsec. (b), is classified to chapter 21 of Title 5, Executive Departments and Government Officers and Employees.

Act Dec. 20, 1941, c. 604, §§ 3, 4, 55 Stat. 848, referred to in subsec. (b), related to repayment by Commissioners of the District of Columbia, of moneys advanced by former Federal Works Administrator for certain defense public works and equipment.

1949 Amendment. Subsec. (b). Act Oct. 28, 1949, substituted the "Classification Act of 1949" for the "Classification Act of 1923."

Transfer of Functions. All functions of the Federal Works Agency and of all agencies thereof, together with all functions of the Federal Works Administrator were transferred to the Administrator of General Services by section 103(a) of Act June 30, 1949. Both the Federal Works Agency and the office of Federal Works Administrator were abolished by section 103(b) of that Act. Section 103 is set out as section 630b of Title 5, Executive Departments and Government Officers and Employees.

Effective Date of Transfer of Functions. Transfer of functions as effective July 1, 1949, see note set out under section 471 of Title 40, Public Buildings, Property, and Works.

§ 1564. Definitions

Historical Note

Codification. Section, Act Oct. 14, 1940, c. 862, Title IV, § 404, as added Apr. 10, 1942, c. 239, § 4, 56 Stat. 213, provided that as used in subchapters II–VII of this title, the terms "Federal Works Administrator" or "Administrator" or "Federal Works Agency", when used with respect to housing, shall be deemed to refer to the "National Housing Administrator" or the "National Housing Agency" and when used with respect to public works and equipment, shall be deemed to refer to the "Federal Works Administrator" or the "Federal Works Agency".

Functions of the Federal Works Administrator relating to defense housing had been consolidated with other agencies into the National Housing Agency during World War II by Ex.Ord.No. 9070, § 1, Feb. 24, 1942, 7 F.R. 1529.

1947 Reorg.Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, set out in note under former section 133y—16 of Title 5, Executive Departments and Government Officers and Employees, transferred the functions under sections 1521–1524, 1541–1550, 1552, 1553, 1561, 1571, and 1572 of this title to the Housing and Home Finance Administrator.

Functions under sections 1531–1534 of this title were transferred from the Federal Works Administrator to the Administrator of General Services by Act June 30, 1949, c. 288, Title I, § 103(a), 63 Stat. 380, and were transferred from the latter to Housing and Home Finance Administrator by 1950 Reorg.Plan No. 17, § 1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269, set out in note under section 133Z—15 of Title 5, Executive Departments and Government Officers and Employees. See, also, note under section 1532 of this title.

The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73.

SUBCHAPTER VI.—HOUSING FOR DISTRESSED FAMILIES OF SERVICEMEN AND VETERANS

Historical Note

Revolving Fund. Establishment of revolving fund under which to account for assets and liabilities in connection with veterans' re-use housing under sections 1571–1573 and 1575 of this title, see section 1701g—5 of Title 12, Banks and Banking.

§ 1571. Construction of temporary housing facilities; rentals

In those areas or localities where the Administrator shall find that an acute shortage of housing exists or impends and that, because of war restrictions, permanent housing cannot be provided in sufficient quantities when needed, the Administrator is authorized to exercise all of the powers specified in subchapters II and IV of this chapter, subject to all of the limitations upon the exercise of such powers contained in such subchapters, to provide housing for distressed families of servicemen and for veterans and their families who are affected by evictions or other unusual hardships (where their needs cannot be met through utilization of the existing housing supply, including housing under the jurisdiction of the Administrator): *Provided,* That any housing constructed under the provisions of this subchapter shall be undertaken only where the need cannot be met by moving existing housing and shall be of a temporary character subject to the removal provisions contained in subchapter IV of this chapter: *And provided further,* That the Administrator shall fix fair rentals for housing constructed or made available pursuant to this subchapter which shall be within the financial reach of families of servicemen and veterans with families. Oct. 14, 1940, c. 862, Title V, § 501, as added June 23, 1945, c. 192, 59 Stat. 260, and amended 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73.

Historical Note

Transfer of Functions. The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3.

Continuation of Provisions Until July 1, 1953. Section 1(a) (12) of Joint Res. July 3, 1952, c. 570, 66 Stat. 332, as amended by Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, provided that this section should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc. No.2914, 15 F.R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond July 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

Repeal of Prior Acts Continuing Section. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 291, 66 Stat. 54, as amended by Joint Res.

May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

Cross References

Establishment of income limitations for occupancy of housing, and effect on prior tenants, see section 1589b of this title.

Notes of Decisions

Library references

Armed Services ⚖111.
C.J.S. Army and Navy § 60.

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1. Purpose

This subchapter was intended to furnish to servicemen and veterans cheap but adequate housing. Shanks Village Committee Against Rent Increases v. Cary, C.A.N.Y.1952, 197 F.2d 212.

2. Law governing

Leases to dwellings in housing project established under this section could be terminated only in accordance with McKinney's N.Y.Unconsol.Laws § 8582(e). Shanks Village Committee Against Rent Increases v. Cary, C.A.N.Y.1952, 197 F.2d 212.

3. Property right

Right of veterans to continue to occupy housing established for them under this section was a property right of peculiar intrinsic value. Shanks Village Committee Against Rent Increases v. Cary, C.A.N.Y.1952, 197 F.2d 212.

4. Rent increases

Under this section, the test to determine rentals is the financial reach of families of servicemen and veterans, rather than value of the property to be rented. Shanks Village Committee Against Rent Increases v. Cary, C.A.N.Y.1952, 197 F.2d 212.

Increased operating costs afforded no legal basis for 15 percent increase in rentals demanded by officers of housing project established under this chapter. Id.

5. Exhausting administrative remedy

Housing project tenants could not maintain suit to enjoin officials of such project, established under this section, from terminating leases, evicting tenants, and raising rent, unless tenants had exhausted their administrative remedies and unless the agency action was final. Shanks Village Committee Against Rent Increases v. Cary, C.A.N.Y.1952, 197 F.2d 212.

6. Injunction

Letter from manager of housing project established under this section terminating lease and requiring rental increase was equivalent to eviction notice, and therefore action by tenants for injunction against termination, eviction, and rent increases was not premature. Shanks Village Committee Against Rent Increases v. Cary, C.A.N.Y.1952, 197 F.2d 212.

In action by tenants of housing project established under this section against officials of such project to enjoin termination of leases, eviction, and rental increases, whether defendants had capacity to be sued was for trial court to determine upon sufficient evidence. Id.

§ 1572. Availability of funds—Appropriation; limitation on use; repayment of certain expenses

(a) To carry out the purposes of this subchapter, and for administrative expenses in connection therewith, any funds made available under subchapter II of this chapter are made available, and for such purposes there is also authorized to be appropriated the sum of

$445,500,000: *Provided*, That none of the funds authorized in this section to be used for the purposes of this subchapter shall be used to construct any new temporary housing: *And provided further*, That any educational institution, State or political subdivision thereof, local public agency, or nonprofit organization which has incurred expenses in the relocation (including the costs of disassembling, transporting, site preparation, and re-erection but not including the costs of site acquisition or the installation of off-site utilities) of temporary housing or other facilities (but not including demountable houses) under the jurisdiction or control of the Housing and Home Finance Administrator for re-use in providing temporary housing for distressed families of servicemen and for veterans and their families shall, upon application therefor, be reimbursed for such expenses by said Administrator out of the funds made available by the First Deficiency Appropriation Act, 1946 (H.R. 4805) to carry out the purpose of sections 1571–1573 of this title.

Transfer of surplus housing or facilities for use by educational institutions

(b) Upon request of the Housing and Home Finance Administrator, any Federal agency having jurisdiction or control of structures or facilities (including lands, improvements, equipment, materials, or furnishings) which are no longer required by such agency and which, in the determination of said Administrator, can be utilized to provide temporary housing for distressed families of servicemen, for veterans and their families, or for single veterans attending educational institutions or for members of faculties (including the families of such members) of educational institutions furnishing education and training to veterans under title II of the Servicemen's Readjustment Act of 1944, as amended, in accordance with this subchapter, may, notwithstanding any other provisions of law, transfer such structures or facilities to said Administrator, without reimbursement, for such use.

Transfer of temporary housing to educational institutions, States and public agencies, and nonprofit organizations

(c) Without regard to the provisions of any other law, but subject to the removal provisions of section 1553 of this title, said Administrator may transfer, for such consideration and subject to such terms and conditions as he deems feasible under the circumstances, any temporary housing (intact or in panels suitable for re-use) under his jurisdiction to any educational institution, State or political subdivision thereof, local public agency, or nonprofit organization, for use or reuse in producing temporary housing for families of servicemen, for veterans and their families, or, in the discretion of the Administrator, for single veterans attending educational institutions or for members of faculties (including the families of such members) of educational institutions furnishing education and training to veterans under title II of the Servicemen's Readjustment Act of 1944, as amended.

Transfer of structures and facilities; reimbursement of relocation or conversion costs

(d) Upon approval of an application, made by any educational institution, State or political subdivision thereof, local public agency, or nonprofit organization, for temporary housing for the purposes of this subchapter, the Housing and Home Finance Administrator, if he determines that such action will aid in expediting the provision of such temporary housing, may—

(1) transfer hereunder to the applicant structures or facilities necessary or suitable to provide such temporary housing; and

(2) contract to reimburse the applicant (including the making of advances) for the cost, as certified by the applicant and approved by the Administrator, in the relocation or conversion (including the costs of disassembling, transporting and reerecting structures and facilities, and connecting utilities from dwellings to mains, but not including the costs of site acquisition and preparation, or the installation of streets and utility mains) of such temporary housing and facilities.

Definition of administrative expense

(e) The term "administrative expenses", as used in this section, shall be deemed to include administrative expenses of the Housing and Home Finance Agency in performing any functions with respect to priorities or allocations of materials or equipment for public or private housing, and of the Housing Expediter (including until June 30, 1946, those of any Government agencies in carrying out parts of the veterans' emergency housing program of the Housing Expediter authorized by existing law, to the extent that additional administrative expenses of such agencies are thereby involved) in performing any functions with respect to facilitating the provision of veterans' housing authorized by existing law. Oct. 14, 1940, c. 862, Title V, § 502, as added June 23, 1945, c. 192, 59 Stat. 260, and amended Dec. 31, 1945, c. 657, 59 Stat. 674; Mar. 28, 1946, c. 118, §§ 1, 2, 60 Stat. 85; Aug. 8, 1946, c. 917, § 1, 60 Stat. 958; May 31, 1947, c. 91, § 1, 61 Stat. 128; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

References in Text. Words "First Deficiency Appropriation Act, 1946 (H.R. 4805)", referred to in subsec. (a), refer to Act Dec. 28, 1945, c. 589, 59 Stat. 632.

Words "title II of the Servicemen's Readjustment Act of 1944, as amended", referred to in subsecs. (b) and (c), refer to title II of Act June 22, 1944, c. 268, 58 Stat. 287.

The Housing Expediter, referred to in subsec. (e), was abolished and the Office of the Housing Expediter was terminated and liquidated by Act July 31, 1951, c. 275, Title II, § 202(d), 65 Stat. 144, which is set out as section 1898(a) of Appendix to Title 50, War and National Defense.

1947 Amendment. Subsec. (a). Act May 31, 1947 increased the appropriation from $410,000,000 to $445,500,000.

1946 Amendments. Subsec. (a). Acts Aug. 8, 1946, and Mar. 28, 1946, substituted "sections 1571–1573 of this title" for "this subchapter" and "$410,000,000 for "$160,000,000," respectively.

Subsecs. (b), (c). Act Aug. 8, 1946, extended use of housing to members of faculties and their families.

Subsec. (d). Act Mar. 28, 1946 added subsecs. (d).

Subsec. (e). Act Aug. 8, 1946, substituted "section" for "subchapter."

Act Mar. 28, 1946, added subsec. (e).

1945 Amendment. Act Dec. 31, 1945 amended section generally by adding all text following "are made available."

Transfer of Functions. The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3.

Availability Of Funds. Section 2 of Act May 31, 1947 provided: "That the additional funds herein authorized [by Act May 31, 1947] shall be available to carry out the purposes of sections 501, 502, and 503 of said Act of October 14, 1940, as amended [sections 1571–1573 of this title], but shall be available only for necessary expenses in (1) completing the provision of temporary housing for which a contract in writing with any educational institution, State or political subdivision thereof, local public agency, or nonprofit organization had been made prior to the enactment hereof pursuant to title V of said Act of October 14, 1940, as amended [sections 1571–1573 of this title]: Provided, That such additional funds shall not be available for completing suspended units with respect to which, prior to April 1, 1947, no expenditures were made by the Administrator or the only expenditures made by the Administrator were for dismantling or dismantling and transportation, and (2) reimbursing any such educational institution, State or political subdivision thereof, local public agency, or nonprofit organization (a) for funds expended by it in completing any such temporary housing (exclusive of the costs of site acquisition and preparation, or the installation of streets and utility mains), or (b) for the cost of utility and other work in connection with any such temporary housing performed by it for the Administrator on a reimbursable basis pursuant to section 502(d) of said Act of October 14, 1940, as amended [section 1572(d) of this title], and (3) making payment, to such educational institutions, States or political subdivisions thereof, local public agencies and nonprofit organizations of amounts equal to actual expenditures made by them prior to April 1, 1947, for costs of site acquisition and preparation, or installation of streets and utility mains, with respect to suspended units referred to in the proviso in clause (1) above."

Additional Appropriation. H. J. Res. Apr. 12, 1946, c. 135, 60 Stat. 88, provided for an additional appropriation of $253,727,000 to remain available until expended.

Congressional Comment: For legislative history and purpose of Act Dec. 31, 1945, see 1945 U.S.Code Cong.Service, p. 952. See, also, Act Aug. 8, 1946, 1946 U.S.Code Cong.Service, p. 1499; Act May 31, 1947, 1947 U.S.Code Cong.Service, p. 1132.

§ 1573. Definitions

As used in this subchapter the term "families of servicemen" shall include the family of any person who is serving in the military or naval forces of the United States, and the term "veterans" shall include any person who has served in the military or naval forces of the United States during the present war and prior to such date thereafter as shall be determined by the President and who has been discharged or released therefrom under conditions other than dishonorable. Oct. 14, 1940, c. 862, Title V, § 503 as added June 23, 1945, c. 192, 59 Stat. 260, and amended June 30, 1953, c. 174, § 1, 67 Stat. 132.

Historical Note

1953 Amendment. Act June 30, 1953 inserted "and prior to * * * by the President" immediately following "during the present war".

Continuation of Provisions Until July 1, 1953. Section 1(a) (21) of Joint Res. July 3, 1952, c. 570, 66 Stat. 332, as amended by Joint Res. Mar. 31, 1953, c. 13, § 1, 67 Stat. 18, provided that this section should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc.No.2914, 15 F.R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond July 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

Repeal of Prior Acts Continuing Section. Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

Period of Service in Military or Naval Forces. Proc. No. 3080, Jan. 5, 1955, 20 F.R. 173, fixed Feb. 1, 1955, as the date prior to which persons must have served in the military or naval forces of the United States in order that such persons come within the meaning of the term "veterans" contained in this section.

§ 1574. Repealed. Oct. 31, 1951, c. 654, § 1(113), 65 Stat. 706

Historical Note

Section, Act Oct. 14, 1940, c. 862, Title V, § 504, as added Aug. 8, 1946, c. 912, § 2, 60 Stat. 958, related to the use or reuse of structures or facilities of Federal agencies as educational facilities for persons receiving training courses or education under title II of the Servicemen's Readjustment Act of 1944, as amended.

§ 1575. Relinquishment of Government's rights in temporary housing on campuses or other educational lands—Filing of request; definition

(a) Upon the filing of a request therefor as herein provided, the Administrator shall relinquish and transfer, without monetary consideration, to any educational institution all contractual rights (including the right to revenues and other proceeds) and all property right, title, and interest of the United States in and with respect to any temporary housing located on land owned by such institution, or controlled by it and not held by the United States: *Provided,* That any net revenues or other proceeds from such housing to which the United States is entitled shall not cease, by virtue of this section, to accrue to the United States until the end of the month in which the rights, title, and interest with respect to such housing are relinquished and transferred hereunder, and the obligation of the transferee to pay such accrued amounts shall not be affected by this section: *And provided further,* That this shall not be deemed to require a transfer to an educational institution which has no con-

tractual or other interest in the housing or the land on which it is located except that of a lessor. As used in this section, the term "temporary housing" shall include any housing (including trailers and other mobile or portable housing) constructed, acquired, or made available under this subchapter, and includes any structures, appurtenances, and other property, real or personal, acquired for or held in connection therewith.

Time of filing request; legal opinion; effect of relinquishment; prompt action

(b) The filing of a request under this section must be made within one hundred and twenty days of June 28, 1948 and shall be authorized by the board of trustees or other governing body of the institution making the request. Such request shall be accompanied by an opinion of the chief law officer or legal counsel of the institution making the request to the effect that it has legal authority to make the request, to accept the transfer of and operate any property involved, and to perform its obligations under this section. The provisions of section 1553 of this title (and the contractual obligations of the educational institution to the Federal Government with respect thereto) shall cease to apply to any temporary housing to which rights are relinquished or transferred under this section if (and only if) the request therefor is supported by a resolution of the governing body of the municipality or county having jurisdiction in the area specifically approving the waiver of the requirements of said section 1553 of this title. The Administrator shall act as promptly as practicable on any request which complies with the provisions of this section and is fully supported as herein required.

Priority in filling vacancies

(c) In filling vacancies in any housing for which rights are relinquished or transferred under subsection (a) of this section, preference shall be given to veterans or servicemen, who are students at the educational institution, and their families: *Provided*, That the educational institution shall be deemed to comply with this subsection if it makes available to veterans or servicemen and their families accommodations in any housing of the institution equal in number to the accommodations in the housing for which such rights are relinquished or transferred. Oct. 14, 1940, c. 862, Title V, § 505, as added June 28, 1948, c. 688, § 1, 62 Stat. 1063, and amended Apr. 20, 1950, c. 94, Title II, § 204, 64 Stat. 73; Oct. 26, 1951, c. 577, § 2, 65 Stat. 648.

Library references: Colleges and Universities ⇐6(1); C.J.S. Colleges and Universities § 10.

Historical Note

1951 Amendment. Subsec. (c). Act Oct. 26, 1951, struck out "of World War II" thus making section applicable to veterans of Korean War.

Transfer of Functions. The "Housing and Home Finance Administrator" and the "Housing and Home Finance Agency" were substituted for the "National

Housing Administrator" and the "National Housing Agency" wherever appearing by Act Apr. 20, 1950. This identical substitution was also made by 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

Transfers to Howard University; Provisions for Retaking. Sections 5 and 6 of Act June 28, 1948 provided:

"Sec. 5. The Defense Homes Corporation is authorized to convey, without reimbursement therefor, to Howard University, a corporation organized pursuant to an Act of Congress, all of its right, title, and interest in certain lands in the District of Columbia, together with the improvements constructed thereon and the personal property used in connection therewith, and commonly known as Lucy Diggs Slowe Hall, 1919 Third Street Northwest, and George Washington Carver Hall, 211 Elm Street Northwest: Provided, That no employee of the United States or of the District of Columbia who, on the date of approval of this Act [June 28, 1948], is a tenant of either Lucy Diggs Slowe Hall or George Washington Carver Hall shall, unless quarters were assigned to such tenant on a transient basis or on the sole basis that the tenant was enrolled at an educational institution, be evicted from such halls within four years after the approval of this Act [June 28, 1948], except where such tenant commits a nuisance or otherwise violates any obligation of tenancy.

"The Reconstruction Finance Corporation is hereby authorized and directed to discharge the indebtedness of the Defense Homes Corporation to the Reconstruction Finance Corporation in an amount equal to the Defense Homes Corporation's net investment in these properties as of the date of transfer, as determined by the President of the Defense Homes Corporation, and the Secretary of the Treasury is authorized and directed to discharge the indebtedness of the Reconstruction Finance Corporation to the Treasury in like amount as of the same date.

"Sec. 6. The right, title, and interest in any lands, together with the improvements constructed thereon, which are conveyed pursuant to the authority granted by section 5 hereof, shall revert to the United States upon a written finding made by the President prior to July 1, 1963, that the property is needed by the United States in connection with a national defense emergency."

Abolition of Reconstruction Finance Corporation. The Reconstruction Finance Corporation, referred to in section 5 of Act June 28, 1948, set out as a note under this section, was abolished by section 6(a) of 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of Title 15, Commerce and Trade.

Legislative History: For legislative history and purpose of Act June 28, 1948, see 1948 U.S.Code Cong.Service, p. 2099. See, also, Act Oct. 26, 151, 1951 U.S.Code Cong. Service, p. 2452.

§ 1576. Relinquishment of title to temporary housing to State, county, city, or other public body

Historical Note

Codification. Section, Acts Aug. 24, 1949, c. 506, Title II, § 201, 63 Stat. 659; Sept. 6, 1950, c. 896, ch. VIII, Title II, § 201, 64 Stat. 723, which was not repeated in the Independent Offices Appropriation Act, 1952, Act Aug. 31, 1951, c. 376, 65 Stat. 268, provided that application for relinquishment had to be filed by Dec. 30, 1950.

Former section 1576 of this title was enacted as a part of the Independent Offices Appropriation Act, 1951, and not as a part of Title V of the Lanham Public War Housing Act which comprises this subchapter.

SUBCHAPTER VII.—DISPOSAL OF WAR AND VETERANS' HOUSING

Cross References

Extension of dates for disposal and other actions relating to housing under this chapter, see section 1589a of this title.

§ 1581. Housing disposition—Mandatory transfers

(a) Upon the filing of a request therefor as herein prescribed, the Administrator shall (subject to the provisions of this section) relinquish and transfer, without monetary consideration, to any State or political subdivision thereof, local housing authority, local public agency, nonprofit organization, or educational institution, all contractual rights (including the right to revenues and other proceeds) and all property right, title, and interest of the United States in and with respect to (1) any temporary housing located on land owned or controlled by such transferee and in which the United States has no leasehold or other property interest, and (2) housing materials which have been made available to the transferee by the Administrator pursuant to section 1572 of this title.

Transfer to provide housing for parents of deceased World War II servicemen

(b) Upon the filing of a request therefor as herein prescribed, the Administrator may (subject to the provisions of this section) relinquish and transfer, without monetary consideration other than that specifically required by this subsection, to any State, county, municipality, or local housing authority, or to any educational institution where the housing involved is being operated for its student veterans or where the land underlying the housing is in the ownership of two or more educational institutions, or to any other local public agency or nonprofit organization where the housing involved has been made available by the United States to such agency or organization pursuant to section 1572 of this title or where the Administrator determines that the housing involved is urgently needed by parents of persons who served in the armed forces at any time on or after September 16, 1940, and prior to July 26, 1947, or on or after June 27, 1950, and prior to such date thereafter as shall be determined by the President and died of service-connected illness or injury (in which case the preferences in subsection (d) (1) of this section shall not apply), all right, title, and interest of the United States in and with respect to any temporary housing (excluding commercial facilities which the Administrator determines are suitable for separate disposal and community facilities which the Administrator determines should be disposed of separately) located on land in which the United

States has a property interest through ownership, lease, or otherwise, under the following conditions:

(1) If the land is owned by the United States and under the jurisdiction of the Administrator, the transferee shall have purchased such land from the Administrator at a price substantially equal to the cost to the United States of the land (including survey, title examination, and other similar expenses incident to acquisition but excluding the cost or value of all improvements thereto by the United States other than extraordinary fill), or, if the Administrator determines the amount of such cost to be nominal or not readily ascertainable, at a price which the Administrator determines to be fair and reasonable. Payment for such land shall be made in full at the time of sale or in not more than ten equal annual installments (the first of which shall be paid within one year from the date of conveyance) all of which shall be secured as determined by the Administrator with interest from the date of conveyance at the going Federal rate of interest at the time of conveyance.

(2) If the land is owned by the United States and not under the jurisdiction of the Administrator, the transferee shall have purchased such land from the Federal agency having jurisdiction thereof. The Federal agency having jurisdiction of any such land is authorized to sell and convey the same to any such transferee on the terms authorized herein except that the determinations required to be made by the Administrator shall be made by the agency having jurisdiction of such land.

(3) If the United States does not own the land but has an interest therein through lease or otherwise, the transferee shall (i) where it is not the landowner, obtain the right to possession of such land for a term satisfactory to the Administrator, (ii) obtain from the landowner a release (or, if the transferee is the landowner, furnish a release) of the United States from all liability in connection therewith, including any liability for removal of structures or restoration of the land, except for any rental or use payment due at the time of transfer, and (iii) reimburse the United States for the proportionate amount of any payments made by the United States for the right to use the land and for taxes or payments in lieu of taxes for any period extending beyond the time of the transfer, and (iv) if the interest of the United States is not under the jurisdiction of the Administrator, the transferee shall obtain a transfer or release of the interest of the United States from the Federal agency having jurisdiction, which transfers and releases by such Federal agencies are authorized on such terms as the head of the respective agency determines to be in the public interest.

Requests for relinquishment and transfer

(c) The filing of a request under subsections (a), (b), (g), or (h) of this section must be made on or before June 30, 1953, unless the Administrator shall, in any specific case, authorize the filing of a request subsequent to such date but on or before June 30, 1951,[1] and, in any such case, the Administrator may extend, for a specified period not beyond December 31, 1951, the time hereinafter prescribed for complying with all conditions to the relinquishment or transfer. Such request shall be in the form of a resolution adopted by the governing body of the applicant, except that, in the case of a State, such request may be in the form of a written request from the governor, and, in the case of a local housing authority (other than the Alaska Housing Authority), or a local public agency organized specifically and solely for the purpose of slum clearance and community redevelopment, shall be accompanied by a resolution of the governing body of the municipality or county approving the request for transfer. Such request shall be accompanied by either (1) a final opinion of the chief law officer or legal counsel of the applicant to the effect that it has legal authority to make the request, to accept the transfer of and operate any property involved, and to perform its obligations under this subchapter, or (2) a preliminary opinion of such officer or counsel concerning the legal authority of the applicant with respect to the proposed relinquishment or transfer including a statement of the reasons for not furnishing the final opinion with the request and the time required to furnish such opinion. If a request has been submitted as herein provided, the applicant shall comply with all conditions to the relinquishment or transfer (including the furnishing of the final legal opinion) on or before June 30, 1953: *Provided*, That, in any case where the applicant is unable to comply with all conditions to the relinquishment or transfer because of the need for the enactment of State legislation or charter amendment, such date shall be June 30, 1952, and may be extended by the Administrator, upon request in a particular case, to December 31, 1952. The Administrator shall act as promptly as practicable on any request which complies with the provisions of this section and is supported as herein required, and shall as promptly as practicable arrange for the making of any survey or the performance of other work necessary to the transfer: *Provided*, That, notwithstanding the provisions of this section, the Administrator may at any time, except with respect to housing for which a request has been or may be submitted under subsection (a) of this section, remove, dispose of, or retain any temporary housing, or part thereof, in accordance with any provision of subchapters II–VII of this chapter.

Representations by transferee as to use of property; preferences

(d) No relinquishment or transfer with respect to temporary housing shall be made under this section unless the transferee rep-

resents in its request therefor that it proposes, to the extent permitted by law:

(1) As among eligible applicants for occupancy in dwellings of given sizes and at specified rents, to extend the following preferences in the selection of tenants:

First, to families which are to be displaced by any low-rent housing project or by any public slum-clearance or redevelopment project initiated after January 1, 1947, or which were so displaced within three years prior to making application for admission to such housing; and as among such families first preference shall be given to families of disabled veterans whose disability has been determined by the Veterans' Administration to be service-connected, and second preference shall be given to families of deceased veterans and servicemen whose death has been determined by the Veterans' Administration to be service-connected, and third preference shall be given to families of other veterans and servicemen;

Second, to families of other veterans and servicemen; and as among such families first preference shall be given to families of disabled veterans whose disability has been determined by the Veterans' Administration to be service-connected, and second preference shall be given to families of deceased veterans and servicemen whose death has been determined by the Veterans' Administration to be service-connected: *Provided*, That if the transferee is an educational institution it may limit such preferences to student veterans and servicemen, and their families, and may, in lieu of such preferences, make available to veterans or servicemen and their families accommodations in any housing of the institution equal in number to the accommodations relinquished or transferred to it: *And provided further*, That, notwithstanding such preferences, if the transferee is a State, political subdivision, local housing authority, or local public agency, it will, in filling vacancies in housing transferred under subsection (b) of this section, give such preferences to military personnel and persons engaged in national defense or mobilization activities as the Secretary of Defense or his designee prescribes to such transferee.

(2) Not to dispose of any right, title, or interest in the property (by sale, transfer, grant, exchange, mortgage, lease, release, termination of the leasehold, or any other relinquishment of interest) either (i) for housing use on the present site or on any other site except to a State or political subdivision thereof, local housing authority, a local public agency, or an educational or eleemosynary institution, or (ii) for any other use unless the governing body of the municipality or county shall have adopted a resolution determining that, on the basis of local need and acceptability, the structures involved are satisfactory for such

use and need not be removed: *Provided,* That this representation will not apply to any disposal through demolition for salvage, lease to tenants for residential occupancy, or lease of nondwelling facilities for the continuance of a use existing on the date of transfer, or where such disposal is the result of a bona fide foreclosure or other proceeding to enforce rights given as security for a loan to pay for land under this section: *And provided further,* That nothing contained in this paragraph shall be construed as applicable to the disposition of any land or interest therein after the removal of the structures therefrom.

(3) To manage and operate the property involved in accordance with sound business practices, including the establishment of adequate reserves.

(4) Whenever the structures involved, or a substantial portion thereof, are terminated for housing use and are not to be used for a specific nonhousing use, to promptly demolish such structures terminated for housing use and clear the site thereof.

Waiver of removal requirements

(e) Any relinquishment or transfer by the Administrator under this section shall constitute a waiver of the requirements of section 1553 of this title (and any contractual obligations pursuant thereto) for removing the housing involved if the request for such relinquishment or transfer was made, as authorized herein, by the governing body of the municipality or county, or by the local housing authority, or, in other cases, if, prior to or within six months after the date of the relinquishment or transfer, there is filed with the Administrator a resolution of such governing body specifically approving (1) the unconditional waiver of such requirements or (2) the waiver of such requirements subject to conditions specified in the resolution. Any such conditions shall not affect the waiver of removal requirements hereunder, and the United States shall assume no responsibility for compliance therewith.

Disposition of net revenue and proceeds; transfer charges

(f) In any relinquishment or transfer under this section, the net revenues and other proceeds from such housing to which the United States is entitled on the basis of periodic settlements shall continue to accrue to the United States until the end of the month in which the relinquishment or transfer is made, and the obligation of the transferee to pay such accrued amounts shall not be affected by this section. The Administrator may charge to the transferee the cost to the United States of any survey, title information, or other item incidental to the transfer.

Transfers for slum clearance and community redevelopment projects

(g) Upon the filing of a request therefor as herein prescribed, the Administrator may (subject to the provisions of this section) relinquish and transfer, without monetary consideration other than pay-

ment for land involved as specifically required by subsection (b) of this section, to any local public agency organized specifically and solely for the purpose of slum clearance and community redevelopment in a municipality in which the total number of persons, who on December 31, 1948, were living in temporary family accommodations provided by the United States or any agency thereof since September 8, 1939, exceeded the total population of such municipality as shown by the 1940 census, all right, title, and interest of the United States in and with respect to any temporary housing located in such municipality under the conditions set forth in subsection (b) of this section. Notwithstanding the provisions of subsection (b) of this section, the Administrator shall not relinquish or transfer any right, title, or interest of the United States in and with respect to any temporary housing situated in such a municipality except as set forth in this subsection if at the time of the relinquishment or transfer there is in existence in such a municipality a local public agency organized specifically and solely for the purpose of slum clearance and community redevelopment.

Transfers of temporary housing of masonry construction

(h) Upon the filing of a request therefor as herein prescribed, the Administrator may (subject to the provisions of this section except the provisions of subsection (d) of this section) relinquish and transfer to any municipality, without monetary consideration other than payment for the land involved as specifically required by subsection (b) of this section, all right, title, and interest of the United States in and with respect to unoccupied temporary housing of masonry construction located in such municipality: *Provided*, That such housing has been wholly or partially stripped of trim and fixtures prior to April 20, 1950 and the municipality adopts a resolution determining that the structures, with proposed improvements, will be suitable for long-term housing use. Oct. 14, 1940, c. 862, Title VI, § 601, as added June 28, 1948, c. 688, § 7, as added Apr. 20, 1950, c. 94, Title II, § 201, 64 Stat. 59, and amended by Ex.Ord.No. 10284, §§ 1, 2, Sept. 4, 1951, 16 F.R. 8971; Oct. 26, 1951, c. 577, § 2, 65 Stat. 648; Ex.Ord.No. 10339, eff. Apr. 7, 1952, 17 F.R. 3012; Ex. Ord.No. 10395, eff. Sept. 19, 1952, 17 F.R. 8449; Ex.Ord.No. 10425, eff. Jan. 16, 1953, 18 F.R. 405; Feb. 15, 1956, c. 35, 70 Stat. 15.

[1] So in original.

Library references: United States ⇐58; C.J.S. United States §§ 75, 79; C.J.S. Warehousemen and Safe Depositories § 60.

Historical Note

References in Text. Subchapters II–VII of this chapter, referred to in subsec. (c), in the original reads "this Act", meaning Act Oct. 14, 1940, which is set out in such subchapters.

1956 Amendment. Subsec. (g). Act Feb. 15, 1956, limited the restriction on transfer or relinquishment of temporary housing to a local public slum clearance agency to municipalities having such an agency at time of transfer or relinquishment.

1951 Amendment. Subsec. (b). Act Oct. 26, 1951 substituted "at any time * * * by the President" for "during World War

II" following "in the armed forces", thus making section applicable to veterans of Korean war.

Ex.Ord.No.10284. Extension of Time. Subsec. (c) was affected by Ex.Ord.No. 10284, Sept. 4, 1951, which extended the time for filing requests from Dec. 31, 1950 to Dec. 31, 1951, and extended the time for compliance with all conditions to relinquishments or transfers from June 30, 1951 to June 30, 1952.

Ex.Ords.No.10395 and 10339. Extensions of Time. Subsec. (c) was affected by Ex. Ord.No.10395, Sept. 19, 1952, which extended the time for filing requests under subsec. (h) from Dec. 31, 1951 to Dec. 31, 1952 and extended the time for compliance with all conditions to relinquishments or transfers under subsec. (h) from June 30, 1952 to June 30, 1953. Said Ex.Ord. is set out as a note under section 1589a of this title.

Subsec. (c) was affected by Ex.Ord.No. 10339, Apr. 7, 1952, which extended the time for filing requests under subsecs. (a), (b), and (g) from Dec. 31, 1951 to Dec. 31, 1952 and extended the time for compliance with all conditions to relinquishments or transfers under subsecs. (a), (b), and (g) from June 30, 1952 to June 30, 1953. Said Ex.Ord. is set out as a note under section 1589a of this title.

Ex.Ord.No.10425. Extension of Time. Subsec. (c) was affected by Ex.Ord.No. 10425, Jan. 16, 1953, which extended the time for filing requests under subsecs. (a), (b), (g), and (h) from Dec. 31, 1952 to June 30, 1953. Said Ex.Ord. is set out as a note under section 1589a of this title.

Legislative History: For legislative history and purpose of Act Apr. 20, 1950, see 1950 U.S.Code Cong.Service, p. 2021.

§ 1582. Temporary housing exempted from provisions of section 1553 of this title

The requirements of section 1553 of this title shall not apply to any temporary housing—

(a) for which such requirements have been waived pursuant to section 1575 or section 1581 of this title;

(b) transferred by the Administrator to the jurisdiction of the Department of the Army, the Navy, or the Air Force pursuant to section 1524 of this title;

(c) disposed of by the Administrator under subchapter II or IV of this chapter for long-term housing or nonhousing use without any requirement for removal where the governing body of the municipality or county has adopted a resolution determining that, on the basis of local need and acceptability, the structures involved are (1) satisfactory for such long-term use or (2) satisfactory for such long-term use if conditions prescribed in such resolution, affecting the physical characteristics of the project, are met: *Provided*, That any such conditions shall not affect the disposal of any temporary housing hereunder, and the United States shall assume no responsibility for compliance with such conditions: *And provided further*, That any housing disposed of for housing use in accordance with this subsection shall thereafter be deemed to be housing accommodations, the construction of which was completed after June 30, 1947, within the meaning of section 1884 of Appendix to Title 50, relating to preference or priority to veterans or their families; or

(d) disposed of or relinquished by the Administrator prior to April 20, 1950, subject to such requirements or contractual obli-

gations pursuant thereto, where the governing body of the municipality or county on or before December 31, 1950, adopts a resolution as provided in subsection (c) of this section; and any contract obligations to the Federal Government for the removal of such housing shall be relinquished upon the filing of such a resolution with the Administrator.

Oct. 14, 1940, c. 862, Title VI, § 602, as added June 28, 1948, c. 688, § 7, as added Apr. 20, 1950, c. 94, Title II, § 201, 64 Stat. 59, and amended Oct. 26, 1951, c. 577, § 2, 65 Stat. 648.

Historical Note

References in Text. Subchapters II or IV of this chapter, referred to in subsec. (c), in the original reads "title I or title III of this Act", meaning title I or III of Act of Oct. 14, 1940, which is set out in such subchapters.

1951 Amendment. Subsec. (c). Act Oct. 26, 1951, struck out "of World War II" thus making section applicable to veterans of Korean war.

§ 1583. Redetermination of demountable housing as temporary or permanent

With respect to any housing classified, prior to April 20, 1950, by the Administrator as demountable, the Administrator shall, as soon as practicable but not later in any event than December 31, 1950, and after consultation with the communities affected, redetermine (taking into consideration local standards and conditions) whether such housing is of a temporary or permanent character, and after such redetermination shall dispose of such housing in accordance with the provisions of this subchapter. Oct. 14, 1940, c. 862, Title VI, § 603, as added June 28, 1948, c. 688, § 7, as added Apr. 20, 1950, c. 94, Title II, § 201, 64 Stat. 59.

§ 1584. Removal of all dwelling structures on land under Administrator's control; temporary housing exempted; preference in fulfilling vacancies

With respect to temporary housing remaining under the jurisdiction of the Administrator on land under his control, the Administrator shall (1) permit vacancies, occurring or continuing after July 1, 1953, to be filled only by transfer of tenants of other accommodations in the same locality being removed as required by subchapters II–VII of this chapter; (2) notify, on or before March 31, 1954, all tenants to vacate the premises prior to July 1, 1954; (3) promptly after July 1, 1954, cause actions to be instituted to evict any tenants still remaining; and (4) remove (by demolition or otherwise) all dwelling structures as soon as practicable after they become vacant: *Provided,* That in any case where a request for relinquishment or transfer has been filed pursuant to section 1581 of this title and where under the provisions of section 1581(c) of this title the

date for compliance with all conditions to the relinquishment or transfer shall have been extended, each of the foregoing dates shall be extended for a period of time equal to the period of the extension under section 1581(c) of this title: *And provided further*, That nothing heretofore in this section shall apply (1) to any temporary housing in any municipality in which the total number of persons, who on December 31, 1948, were living in temporary family accommodations provided by the United States or any agency thereof since September 8, 1939, exceeds 30 per centum of the total population of such municipality as shown by the 1940 census, nor (2) to any temporary housing as to which the local governing body has adopted a resolution as provided in section 1582(c) of this title, nor (3) to any temporary housing for which a request has been submitted in accordance with section 1581(b) of this title, but which has not been relinquished or transferred solely because the applicant has been unable to obtain from the landowner the right to possession of the land on reasonable terms as determined by the Administrator: *Provided*, That, in filling vacancies in such housing, the preferences set forth in section 1581(d) (1) of this title shall be applicable and that families within such preference classes shall be eligible for admission to such housing, nor (4) to any temporary housing in which accommodations have been reserved, prior to the enactment of this section, for veterans attending an educational institution if (i) such institution certifies that the accommodations are urgently needed for such veterans and submits facts showing, to the satisfaction of the Administrator, that all reasonable efforts have been made by the institution to find other accommodations for them and (ii) such institution agrees to reimburse the Housing and Home Finance Agency for any financial loss to the Agency in the operation of the accommodations after June 30, 1951. Oct. 14, 1940, c. 862, Title VI, § 604, as added June 28, 1948, c. 688, § 7, as added Apr. 20, 1950, c. 94, Title II, § 201, 64 Stat. 59, and amended June 30, 1951, c. 197, 65 Stat. 110; Sept. 1, 1951, c. 378, Title VI, § 603(a), 65 Stat. 314; Ex. Ord.No. 10284, §§ 3–5, Sept. 4, 1951, 16 F.R. 8971; Ex.Ord.No. 10339, eff. Apr. 7, 1952, 17 F.R. 3012.

Historical Note

References in Text. "Subchapters II–VII of this chapter", referred to in the text, in the original reads "this Act", meaning Act Oct. 14, 1940 which is set out in such subchapters.

1951 Amendments. Act Sept. 1, 1951 repealed former fourth and fifth provisos which related to adjustments in rentals that might be set for Government-owned temporary housing.

Act June 30, 1951, substituted "August 15, 1951" for "July 1, 1951."

Ex.Ord.No.10284. Extension of time. Ex.Ord.No.10284, Sept. 4, 1951, affected section by extending time for filling vacancies from Aug. 15, 1951 to July 1, 1952, for notices to vacate premises from Mar. 31, 1952 to Mar. 31, 1953, for time of vacating from July 1, 1952 to July 1, 1953, and for eviction from July 1, 1952 to July 1, 1953. Said Ex.Ord. is set out as a note under section 1589a of this title.

ExOrd.No.10339. Extension of time. Ex.Ord.No.10339, Apr. 7, 1952, affected sec-

tion by extending time for filling vacancies from July 1, 1952 to July 1, 1953, for notices to vacate premises from Mar. 31, 1953 to Mar. 31, 1954, for time of vacating from July 1, 1953 to July 1, 1954, and for eviction from July 1, 1953 to July 1, 1954. Said Ex.Ord. is set out as a note under section 1589a of this title.

Legislative History: For legislative history and purpose of Act Sept. 1, 1951, see 1951 U.S.Code Cong.Service, p. 1716.

Notes of Decisions

1. Notice

This section, providing for extension of time, in cases of acute housing shortage, for removal of temporary housing under control of Administrator of Housing and Home Finance Agency applies only to buildings on land not under Administrator's control and to buildings relating to vacation and removal of temporary housing, and Administrator was required to issue notices to vacate in case which did not come under any exception, regardless of housing shortage. Shanks Village Residents Ass'n v. Cole, 1955, 219 F.2d 28, 95 U.S.App.D.C. 60, certiorari denied 75 S.Ct. 582, 349 U.S. 906, 99 L.Ed. 1242.

§ 1585. Acquisition of housing sites—Lease, condemnation or purchase; temporary housing

(a) The Administrator may continue by lease or condemnation any interest less than a fee simple in lands heretofore acquired by the Administrator for national defense or war housing or for veterans' housing (whether of permanent or temporary character), or held by any Federal agency in connection therewith, and may acquire, by purchase or condemnation, a fee simple title to or lesser interest in any such lands if the Administrator determines that the acquisition of such fee simple or lesser interest is necessary to protect the Government's investment or to maintain the improvements constructed thereon, or that the cost of fulfilling the Government's obligation to restore the property to its original condition would equal or exceed the cost of acquiring the title thereto.

In any city in which, on March 1, 1953, there were more than ten thousand temporary housing units held by the United States of America, or any two contiguous cities in one of which there were on such date more than ten thousand temporary housing units so held, the Administrator may acquire, by purchase or condemnation, a fee simple title to any or all lands in which the Administrator holds a leasehold interest, or other interest less than a fee simple, acquired by the Federal Government for national defense or war housing or for veteran's housing where (1) the Administrator finds that the acquisition by him of a fee simple title in the land will tend to expedite the orderly disposal or removal of temporary housing under his jurisdiction by facilitating the availability of improved sites for privately owned housing needed to replace such temporary housing, and will tend to expedite the transition of the city from a war-affected community containing, as of said date, a large number of temporary houses to a community having additional permanent, well-planned, residential neighborhoods, (2) the local governing body of the city makes a like finding and requests the Administrator to

acquire such title to the land, and (3) the city has furnished assurances satisfactory to the Administrator that no individual who is employed by, or is an official of, the government of the city in which the land is located, or any agency thereof, shall be permitted, directly or indirectly, to have any financial interest in the purchase or redevelopment of such land: *Provided*, That such acquisitions by the Administrator pursuant to this sentence shall be limited to not exceeding four hundred and twenty-five acres of land in the general area in which approximately one thousand five hundred units of temporary housing held by the United States of America were unoccupied on said date: *And provided further*, That funds for such acquisition by the Administrator, which are authorized, pursuant to subsection (c) of this section and title II of the Independent Offices Appropriation Act, 1955, to be expended from the revolving fund established by section 1701g—5 of Title 12, shall be taken into consideration, to the extent that they are needed, in making any determination pursuant to the second proviso under that section. All or any part of any land so acquired by the Administrator may, during the five year period following the date of its acquisition, be sold by the Administrator, through negotiated sale, to such city or any local public agency where (1) the city or local public agency has represented to the Administrator that it is duly authorized under State law to purchase and resell such land, that such land will be made available to private enterprise for development in accordance with local zoning and other laws, and that the aggregate of such land and any other land in the same city previously sold under the authority of this paragraph to the city or a local public agency will be developed for predominantly residential use, and (2) the city or local public agency has agreed to pay the fair market value of the land as determined by the Administrator, after giving consideration, among other relevant information, to the cost to the Federal Government of acquiring the fee simple title and of holding the land pending sale (including estimated amounts to cover legal and overhead expenses of such acquisition and to cover interest costs to the Federal Government of monies invested in the land pending sale). Any such negotiated sale of land to the city or a local public agency shall be made upon terms which require (1) that the city or public agency shall pay in cash at least one third of the price of the land upon its conveyance and the entire price within one year after its conveyance and (2) that any portion of the entire price not paid upon such conveyance shall be represented by an indebtedness which shall bear interest on outstanding balances at a rate of 4 per centum per annum and which shall be secured by a first mortgage lien upon the land or such portion of the land as the Administrator deems adequate to protect the financial interest of the Federal Government. The Administrator may, at any time that he deems it to be in the public interest to do so, dispose, under authority of other provisions of subchapters II–VII of this chapter, of any land acquired by him pursuant to this para-

graph. Any land acquired by the Administrator pursuant to this paragraph which has not been disposed of within five years after its acquisition shall be disposed of by him as expeditiously as possible in the public interest in accordance with other authority contained in subchapters II–VII of this chapter. Notwithstanding the provisions of section 1546 of this title or any other provisions of law, no payments in lieu of taxes shall be made for any tax year beginning subsequent to the date of the acquisition of title to the property by the Administrator.

Land rentals

(b) In any case in which the Administrator holds, on or after April 1, 1950, an interest in land acquired by the Federal Government for national defense, war housing, or veterans' housing and where (1) the term of such interest (as prescribed in the taking or in the lease or other instruments) is for the "duration of the emergency" or "duration of the war", or "duration of the emergency" or "duration of the war" plus a specific period thereafter, or for some similarly prescribed term, and (2) the rental, award, or other consideration which the Federal Government is obligated to pay or furnish for such interest gives the owner of the land less than an annual return, after payment of real estate taxes, of 6 per centum of the lowest value placed on such land by an independent appraiser, hired by the Government to make such appraisal based on the value of the land before the acquisition of the Government's interest therein, plus 100 per centum of such value, the Administrator shall, upon request of the owner of the land and, notwithstanding any existing contractual or other rights or obligations, increase the amount of future payments for such interest in order to give the owner of the land a return for the Government's use thereof not exceeding the 6 per centum annual return described in (2) of this subsection: *Provided,* That this subsection shall not affect any payment heretofore made or any future payment accepted by an obligee, nor shall this subsection limit the consideration which may be paid for the use of any land beyond the existing term of the Government's interest therein.

Reserve account; availability of moneys

(c) Notwithstanding any other provisions of law unless hereafter enacted expressly in limitation hereof, moneys shall be deposited in the reserve account established pursuant to subsections (a) and (b) of section 1543 of this title (which account is continued subject to the limitation as to amount specified in subsection (c) of section 1543 of this title) and all moneys deposited in such reserve account shall be and remain available for any or all of the purposes specified in said subsections (a) or (b) of section 1543 of this title or in this section without regard to the time prescribed in subsection (c) of section 1543 of this title with respect to covering moneys in such account into miscellaneous receipts. Moneys in such reserve accounts shall also be available for the payment of necessary expenses

Note 1

(which shall be considered nonadministrative expenses) in connection with administering (1) transfers pursuant to section 1581 of this title, (2) redeterminations of the temporary or permanent character of demountable housing pursuant to section 1583 of this title, (3) changes in land tenure and revisions in the consideration payable to landowners pursuant to subsections (a) and (b) of this section, and (4) transfers of permanent war housing for low-rent use pursuant to section 1586 of this title. Moneys in such reserve account shall also be available for the purpose of making improvements to, or alterations of, any permanent housing or part thereof if (1) the dwelling structures therein are designed for occupancy by not more than four families and are to be sold separately and (2) such improvement or alteration is requested by the local governing body as a condition to the acceptance of the dedication of streets or utilities or is necessary for compliance with local law or regulation relating to the continued operation or occupancy of the housing by a purchaser. Oct. 14, 1940, c. 862, Title VI, § 605, as added June 28, 1948, c. 688, § 7, as added Apr. 20, 1950, c. 94, Title II, § 201, 64 Stat. 59, and amended Sept. 1, 1951, c. 378, Title VI, § 603(b), (c), 65 Stat. 314; Aug. 2, 1954, c. 649, Title VIII, § 805(1), 68 Stat. 644; Aug. 11, 1955, c. 783, Title I, § 108(d), 69 Stat. 638.

Historical Note

References in Text. Title II of the Independent Offices Appropriation Act, 1955, referred to in subsec. (a), was classified in part to section 1431 of this title and section 1701g-5 of Title 12, Banks and Banking.

Subchapters II–VII of this chapter, referred to in subsec. (a), in the original reads "this Act", meaning Act of Oct. 14, 1940, which is set out in such subchapters.

1955 Amendment. Subsec. (a). Act Aug. 11, 1955 authorized the Administrator to acquire a fee simple title to lands where he finds that such acquisition will tend to expedite the transition of the city from a war-affected community containing a large number of temporary houses to a community having additional permanent, well-planned, residential neighborhoods.

1954 Amendment. Subsec. (a). Act Aug. 2, 1954 added a new par. at the end.

1951 Amendment. Subsec. (b). Act Sept. 1, 1951, § 603(b), (c), in clause (2), inserted "plus 100 per centum of such value", substituted "shall" for "is authorized" after "Administrator", and substituted "increase" for "to increase".

Notes of Decisions

Library references

Eminent Domain ⇐17.
United States ⇐55.
C.J.S. Eminent Domain § 64.
C.J.S. United States §§ 71, 73.

1. Acquisition, necessity of

This section authorizing Housing Administrator to acquire fee to land which is site of federal housing project and in which Federal Government has leasehold when it is necessary to protect investment or to maintain improvements does not contemplate that such improvements are to be maintained indefinitely without reference to statutory policy of disposition of temporary housing. U. S. v. Certain Parcels of Land in City of Cheyenne, Laramie County, Wyo., D.C. Wyo.1956, 141 F.Supp. 300.

2. Government's investment

Under this section providing that Government may condemn fee in lands in which it has previously taken leasehold for defense-housing purposes, upon administrative determination that condemnation of fee is necessary to protect the investment or to maintain improvements constructed thereon, Government is free to adopt method it considers best suited to protect and save its investment and landowners may not successfully complain that Government seeks to profit from quick sale of property so long as they receive just compensation. Arp v. U. S., C.A.Wyo.1957, 244 F.2d 571, certiorari denied 78 S.Ct. 34, 355 U.S. 826, 2 L.Ed.2d 40.

Where Commissioner of Public Housing had determined necessity of bringing subsequent condemnation proceeding to extend Government's right to use of land previously condemned, district court would have no right to substitute its judgment for that of Commissioner, who acted to obtain one-year renewal of lease to protect Government's investments in improvements, or to interfere with Commissioner's exercise of such judgment in absence of fraud, bad faith, or clear abuse of discretion. U. S. v. Certain Parcels of Land in City of Cleveland, Cuyahoga County, State of Ohio, D.C.Ohio 1957, 149 F.Supp. 696.

Where Government had erected improvements on land held by Government on lease obtained through prior condemnation proceeding, Government, which had right under prior proceeding to remove all improvements placed on condemned land, would have right to appropriate the fee simple title to such land as aid to Government in protecting its investment and to enable Government to sell both land and buildings. Id.

Where lease, which Government had acquired in accordance with prior action to condemn exclusive use of certain land, had expired, fact that cost of demolition of improvements made on land by Government might exceed salvage value thereof was not ground for denying subsequent condemnation brought to enable Government to obtain renewal of one lease so that Government could protect its investment in the improvements. Id.

Under this section authorizing Housing Administrator to condemn fee to land which is site of federal housing project and in which United States has leasehold interest when acquisition is necessary to protect investment or to maintain improvements constructed thereon, Administrator may not take fee merely because in his judgment it is necessary for orderly demobilization of war effort but may do so only on a sustainable determination that acquisition is necessary to protect Government's investment or to maintain improvements. U. S. v. Certain Parcels of Land in City of Cheyenne, Laramie County, Wyo., D.C. Wyo., 1956, 141 F.Supp. 300.

Under this section authorizing Housing Administrator to acquire by condemnation fee to land which is site of federal housing development and in which United States holds leasehold interest when he determines that acquisition of fee is necessary to protect Government's investment or to maintain improvements, "investment" relates to physical improvements in existence at time of taking in question and is not limited to possible past loss, and condemnation could be exercised although rental income over years had already yielded considerably more to Government than cost of such housing. Id.

3. Rentals, increase in

Where realty owner and the United States entered into stipulation for rental for realty to be used by the United States for housing purposes for period of emergency and three years thereafter, and value of realty had risen due to growth of surrounding area, proper remedy for realty owner was to apply for increase in rental to provide for 6 per cent annual return on appraised value of realty before acquisition by Government after adding 100 per cent of such value. U. S. v. 12.381 Acres of Land, More or Less, Situate in Curry County, N. M., D.C.N.M.1953, 109 F.Supp. 279.

4. Administrator, power of

Under provision of this section authorizing condemnation of fees in land in which United States had leaseholds for housing purposes, if Housing and Home Finance Administrator determined such taking necessary to protect Government's interest, a determination by acting Public Housing Commissioner that taking of fee was so necessary authorized Government to proceed. Arp v. U. S., C.A.Wyo. 1957, 244 F.2d 571, certiorari denied 78 S.Ct. 34, 355 U.S. 826, 2 L.Ed.2d 40.

Public housing sections 1553, 1584 and this section relating to removal of housing and to power of Administrator to condemn fee to land which is site of housing project and in which Government holds lease do not contemplate that

salvage or liquidation operations are to be limited to moving or to demolishing housing improvements or to selling them without reference to the land but Administrator may acquire fee to leased land and sell units with it. U. S. v. Certain Parcels of Land in City of Cheyenne, Laramie County, Wyo., D.C.Wyo.1956, 141 F.Supp. 300.

Under this section authorizing Housing Administrator to acquire by condemnation fee to land which is site of federal housing project and in which Government holds leasehold interest, that fee owners were willing to pay Government full value of existing improvements on land did not deprive Administrator of power to condemn fee so that housing units could be sold with land. Id.

Under this section authorizing Housing Administrator to acquire by condemnation fee to land which is site of federal housing development and in which United States holds leasehold interest when he determines that acquisition of fee is necessary to protect Government's investment or to maintain improvements, Administrator could reasonably determine that in furtherance of program of acquiring, maintaining and disposing of temporary housing, acquisition of fee would permit disposition of improvements more advantageously to Government than if they were sold to fee owner. Id.

5. Pleadings

Where Government had condemned leasehold estate for defense-housing purposes, and more than ten years later, and after statute had been amended to allow taking of fees in such cases, Government sought to condemn the fee, trial court committed no abuse of discretion in allowing Government to file supplemental petition for condemnation in original proceeding rather than filing independent action. Arp v. U. S., C.A.Wyo.1957, 244 F.2d 571, certiorari denied 78 S.Ct. 34, 355 U.S. 826, 2 L.Ed.2d 40.

6. Amount

Verdict of $75,000 for condemnation of fee in 30.89 acres in Cheyenne, Wyoming in which Government had previously condemned leasehold interest for erection of defense-housing units was supported by the evidence. Arp v. U. S., C.A.Wyo.1957, 244 F.2d 571, certiorari denied 78 S.Ct. 34, 355 U.S. 826, 2 L.Ed.2d 40.

§ 1586. Sale of specific housing projects—Conditions precedent

(a) The Administrator is specifically authorized to convey the following housing projects to the following local public housing agencies respectively, if—

(1) on or before January 30, 1953, (i) the conveyance is requested by the governing body of the municipality or county and (ii) the public housing agency has demonstrated to the satisfaction of the Administrator that there is a need for low-rent housing (as such term is defined in the United States Housing Act of 1937) within the area of operation of such public housing agency which is not being met by private enterprise;

(2) the Administrator determines that the project requested will meet such need in whole or in part, and is suitable for low-rent housing use; and

(3) on or before June 30, 1953, the governing body of the municipality or county enters into an agreement with the public housing agency (satisfactory to the Public Housing Administration, hereinafter referred to as "Administration") providing for local cooperation and payments in lieu of taxes not in excess of the amount permitted by subsection (c) (5) of this section, and the public housing agency enters into an agreement with the Administration (in accordance with subsection (c) of this section) for the administration of the project:

State	Project number	Local public housing agency
Alabama	1041	Housing Authority of District of Birmingham.
	1061	Housing Authority of Greater Gadsden.
	1062	Housing Authority of Greater Gadsden.
	1031	Housing Board of Mobile.
	1033	Housing Board of Mobile.
	1034	Housing Board of Mobile.
	1035	Housing Board of Mobile.
	1036	Housing Board of Mobile.
	1101	Housing Board of Mobile.
	1102	Housing Board of Mobile.
	1072	Housing Authority of Sylacauga.
	1076	Housing Authority of Sylacauga.
	1073	Housing Authority of City of Talladega.
Arkansas	3023	Housing Authority of City of Conway.
California	4031	Housing Authority of City of Fresno.
	4161	Housing Authority of County of Kern.
	4141	Housing Authority of County of Kern.
	4103	Housing Authority of City of Los Angeles.
	4104	Housing Authority of City of Los Angeles.
	4108	Housing Authority of City of Los Angeles.
	4121	Housing Authority of City of Paso Robles.
	4171	Housing Authority of City of Richmond.
	4174	Housing Authority of City of Richmond.
Connecticut	6091	Housing Authority of City of Bristol.
	6024	Housing Authority of Town of East Hartford.
	6031	Housing Authority of City of New Britain.
	6032	Housing Authority of City of New Britain.
	6101	Housing Authority of City of New Haven.
	6041	Housing Authority of City of Waterbury.
	6213	Housing Authority of City of Waterbury.
District of Columbia	49012	National Capital Housing Authority.
	49017	National Capital Housing Authority.
	49044	National Capital Housing Authority.
Florida	8052	Housing Authority of City of Jacksonville.
	8121	Housing Authority of City of Lakeland.
	8062	Housing Authority of City of Miami.
	8011	Housing Authority of City of Orlando.
	8082	Housing Authority of City of Pensacola.
	8084	Housing Authority of City of Pensacola.
	8085	Housing Authority of City of Pensacola.
	8131	Housing Authority of City of Sebring.
	8041	Housing Authority of City of West Palm Beach.
Georgia	9071	Housing Authority of City of Albany.
	9061	Housing Authority of Macon.
	9063	Housing Authority of Macon.
	9041	Housing Authority of Savannah.
	9042	Housing Authority of Savannah.
	9043	Housing Authority of Savannah.
Illinois	11081	Madison County Housing Authority.
	11082	Madison County Housing Authority.
	11111	Winnebago County Housing Authority.
	11112	Winnebago County Housing Authority.
Indiana	12071	Housing Authority of City of Fort Wayne.
	12021	Housing Authority of City of South Bend.

State	Project number	Local public housing agency
Louisiana	16051	Housing Authority of Parish of East Baton Rouge.
Maryland	18095	Housing Authority of Baltimore City.
	18096	Housing Authority of Baltimore City.
	18097	Housing Authority of Baltimore City.
	18098	Housing Authority of Baltimore City.
Massachusetts	19051	Boston Housing Authority.
	19021	Chicopee Housing Authority.
	19022	Chicopee Housing Authority.
	19061	Pittsfield Housing Authority.
	19023	Springfield Housing Authority.
Michigan	20042	Housing Commission of Detroit.
Nevada	26021	Housing Authority of City of Las Vegas.
New Hampshire	27021	Housing Authority of City of Manchester.
New Jersey	28044	Housing Authority of City of Camden.
	28021	Housing Authority of City of Long Branch.
	28072	Housing Authority of City of Newark.
	28111	Housing Authority of Town of Phillipsburg.
New York	30031	Buffalo Municipal Housing Authority.
	30032	Buffalo Municipal Housing Authority.
	30042	Elmira Housing Authority.
	30033	Lackawanna Municipal Housing Authority.
	30039	Lackawanna Municipal Housing Authority.
	30034	Niagara Falls Housing Authority.
	30071	Niagara Falls Housing Authority.
	30082	Massena Housing Authority.
North Carolina	31023	Housing Authority of City of Wilmington.
	31024	Housing Authority of City of Wilmington.
Ohio	33031	Canton Metropolitan Housing Authority.
	33033	Canton Metropolitan Housing Authority.
	33021	Cincinnati Metropolitan Housing Authority.
	33071	Cleveland Metropolitan Housing Authority.
	33074	Cleveland Metropolitan Housing Authority.
	33075	Cleveland Metropolitan Housing Authority.
	33112	Lorain Metropolitan Housing Authority.
	33261	Lorain Metropolitan Housing Authority.
	33262	Lorain Metropolitan Housing Authority.
	33041	Warren Metropolitan Housing Authority.
	33043	Warren Metropolitan Housing Authority.
Oregon	35021	Housing Authority of Portland.
Pennsylvania	36051	Housing Authority of County of Beaver.
	36058	Housing Authority of County of Beaver.
	36041	Housing Authority of Bethlehem.
	36042	Housing Authority of Bethlehem.
	36044	Housing Authority of Bethlehem.
	36151	Allegheny County Housing Authority.
	36152	Allegheny County Housing Authority.
	36061	Housing Authority of County of Lawrence.
	36021	Housing Authority of City of Erie.
	36031	Housing Authority of County of Lycoming.
	36011	Housing Authority of Philadelphia.
	36012	Housing Authority of Philadelphia.
	36014	Housing Authority of Philadelphia.
	36015	Housing Authority of Philadelphia.
	36016	Housing Authority of Philadelphia.
	36101	Housing Authority of City of Pittsburgh.

State	Project number	Local public housing agency
Pennsylvania	36212	Allegheny County Housing Authority.
	36295	Housing Authority of City of York.
Rhode Island	37013	Housing Authority of City of Newport.
South Carolina	38023	Housing Authority of City of Charleston.
	38061	Housing Authority of City of Charleston.
	38041	Housing Authority of City of Spartanburg.
	38042	Housing Authority of City of Spartanburg.
Tennessee	40022	Jackson Housing Authority.
	40023	Milan Housing Authority.
	40011	Nashville Housing Authority.
	40025	Trenton Housing Authority.
Texas	41064	Housing Authority of City of Corpus Christi.
	41065	Housing Authority of City of Corpus Christi.
	41133	Housing Authority of City of Freeport.
	41031	Housing Authority of City of Houston.
	41131	Housing Authority of City of Lake Jackson.
	41101	Housing Authority of City of Mineral Wells.
	41103	Housing Authority of City of Mineral Wells.
	41072	Housing Authority of City of Orange.
	41032	Housing Authority of City of Pasadena.
	41141	Housing Authority of City of Texarkana.
	41121	Housing Authority of City of Wichita Falls.
Virginia	44131	Alexandria Redevelopment and Housing Authority.
	44132	Alexandria Redevelopment and Housing Authority.
	44133	Alexandria Redevelopment and Housing Authority.
	44135	Alexandria Redevelopment and Housing Authority.
	44136	Alexandria Redevelopment and Housing Authority.
	44065	Newport News Redevelopment and Housing Authority.
	44074	Norfolk Redevelopment and Housing Authority.
	44086	Portsmouth Redevelopment and Housing Authority.
Washington	45043	Housing Authority of City of Bremerton.
	45277N	Housing Authority of County of Clallam.
	45315N	Housing Authority of County of Clallam.
	45133	Housing Authority of County of King.
	45052	Housing Authority of City of Seattle.
	45053	Housing Authority of City of Seattle.
	45054	Housing Authority of City of Seattle.
	45055	Housing Authority of City of Seattle.
	45056	Housing Authority of City of Seattle.
	45122	Housing Authority of City of Vancouver.

In addition to the authority of the Administrator under the first sentence of this subsection, the Administrator is specifically authorized to convey any permanent war housing project to a local public

housing agency if requested in writing, within sixty days after April 20, 1950, by such agency or the executive head of the municipality (or of the county or parish if such project is not in a municipality) within which the project is located, or by the Governor of the State where an agency of the State has authority to operate the project: *Provided*, That any conveyance by the Administrator pursuant to this sentence shall be subject to the same conditions and requirements as provided in this section with respect to a project specifically designated herein.

Projects as "low-rent housing"

(b) Upon the conveyance by the Administrator of any such project pursuant to the provisions of this section, such project shall constitute and be deemed to be "low-rent housing" as that term is used and defined in the United States Housing Act of 1937 (and to be a low-rent housing project assisted pursuant to that Act, within the meaning of section 1404a(b) of this title), except that no capital grant or annual contribution shall be made by the Federal Government with respect to such project. If any such project is consolidated under a single annual contributions contract with any low-rent project being assisted with annual contributions under the said Act, the payment of any annual contribution on account of any project so assisted shall not be deemed to be a capital grant or annual contribution with respect to any project conveyed hereunder. Any instrument of conveyance by the Administrator stating that it is executed under subchapters II–VII of this chapter shall be conclusive evidence of compliance therewith insofar as any title or other interest in the property is concerned.

Conditions and requirements of agreements

(c) The agreement between the public housing agency and the Administration required by subsection (a) of this section shall contain the following conditions and requirements, and may contain such further conditions, requirements, and provisions as the Administration determines—

(1) during a period of forty years following the conveyance the project shall be administered as low-rent housing in accordance with subsections (1) and (2) of section 1402 of this title: *Provided*, That if at any time during such period the public housing agency and the Administration agree that the project, or any part thereof, is no longer suitable for use as low-rent housing, the project, or part thereof, shall with the approval of the Administration be sold by the public housing agency after which the agreement shall be deemed to have terminated with respect to such project or part thereof except that the proceeds from such sale, after payment of the reasonable expense thereof, shall be paid to the Administration;

(2) the public housing agency shall, within six months following the conveyance, initiate a program for the removal of all families residing in the project on the date of conveyance who are ineligible under the provisions of the United States Housing Act of 1937 for continued occupancy therein, and shall have required such ineligible tenants to vacate their dwellings within eighteen months after the initiation of such program: *Provided*, That military personnel as designated by the Secretary of Defense or his designee shall not be subject to such removal until eighteen months after the date of conveyance;

(3) annually during the term of such agreement, the public housing agency shall pay to the Administration all income from the project remaining after deducting the amounts necessary (as determined pursuant to regulations of the Administration) for (i) the payment of reasonable and proper costs of operating, maintaining, and improving such project, (ii) the payments in lieu of taxes authorized hereunder, (iii) the establishment and maintenance of reasonable and proper reserves as approved by the Administration, and (iv) the payment of currently maturing installments of principal of and interest on any indebtedness incurred by such public housing agency with the approval of the Administration: *Provided*, That the provisions of this paragraph shall not be applicable to any project which is consolidated under a single contract with one or more low-rent projects being assisted under the United States Housing Act of 1937, and all income from any such project conveyed under this section may be commingled with funds of the project or projects with which it is consolidated and applied in accordance with the requirements of the consolidated contract and the provisions of section 1410(c) of this title;

(4) during the term of such agreement, the project shall be exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivisions;

(5) for the tax year in which the conveyance is made and the next succeeding tax year annual payments in lieu of taxes may be made to the State, city, county, or other political subdivisions in amounts not in excess of the real property taxes which would be paid to such State, city, county, or other political subdivisions if the project were not exempt from taxation; and thereafter, during the term of such agreement, payments in lieu of taxes with respect to the project may be made in annual amounts which do not exceed 10 per centum of the annual shelter rents charged in such project;

(6) in selecting tenants for such project, the public housing agency shall give such preferences as are prescribed by section 1410(g) of this title, except that for one year after the date of conveyance of a project, the public housing agency shall, to the

extent permitted by law, give such preferences, by allocation or otherwise, to military personnel as the Secretary of Defense or his designee prescribes to the public housing agency; and

(7) upon the occurrence of a substantial default in respect to the requirements and conditions to which the public housing agency is subject (as such substantial default shall be defined in such agreement), the public housing agency shall be obligated at the option of the Administration, either to convey title in any case where, in the determination of the Administration (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of this subchapter and the United States Housing Act of 1937, or to deliver possession to the Administration of the project, as then constituted, to which such agreement relates: *Provided*, That in the event of such conveyance of title or delivery of possession, the Administration may improve and administer such project as low-rent housing, and otherwise deal with such housing or parts thereof, subject, however, to the limitations contained in the applicable provisions of the United States Housing Act of 1937. The Administration shall be obligated to reconvey or to redeliver possession of the project, as constituted at the time of reconveyance or redelivery, to such public housing agency or to its successor (if such public housing agency or a successor exists) upon such terms as shall be prescribed in such agreement and as soon as practicable after the Administration shall be satisfied that all defaults with respect to the project have been cured, and that the project will, in order to fulfill the purposes of this subchapter and the United States Housing Act of 1937, thereafter be operated in accordance with the terms of such agreement. Any prior conveyances and reconveyances, deliveries and redeliveries of possession shall not exhaust the right to require a conveyance or delivery of possession of the project to the Administration pursuant to this paragraph upon the subsequent occurrence of a substantial default.

Disposition of payments

(d) At the end of each fiscal year, the total amount of payments during such year to the Administration in accordance with subsection (c) of this section shall be covered into the Treasury as miscellaneous receipts. Oct. 14, 1940, c. 862, Title VI, § 606, as added June 28, 1948, c. 688, § 7, as added Apr. 20, 1950, c. 94, Title II, § 201, 64 Stat. 59, and amended by Ex.Ord.No.10284, §§ 6, 7, Sept. 4, 1951, 16 F.R. 8971; Ex.Ord.No.10339, eff. Apr. 7, 1952, 17 F.R. 3012; Ex.Ord. No.10425, eff. Jan. 16, 1953, 18 F.R. 405; Sept. 23, 1959, Pub.L. 86–372, Title VIII, § 807, 73 Stat. 687.

Historical Note

References in Text. The United States Housing Act of 1937, referred to in subsecs. (a) (1), (ii), (b), and (c) (2), (3), (7), is classified to chapter 8 of this title.

Subchapters II–VII of this chapter, referred to in subsec. (b), in the original reads "this Act", meaning Act Oct. 14, 1940, which is set out in such subchapters.

Preferences as are prescribed by section 1410(g) of this title, referred to in subsec. (c) (6), refers to such subsec. (g) prior to its amendment by Pub.L. 87–70, Title II, § 205(a), June 30, 1961, 75 Stat. 164.

1959 Amendment. Subsec. (b). Pub.L 86–372, § 807(1), provided that if any such project is consolidated under a single annual contributions contract with any low-rent project being assisted with annual contributions under the United States Housing Act of 1937, the payment of any annual contribution on account of any project so assisted shall not be deemed to be a capital grant or annual contribution with respect to any project conveyed hereunder.

Subsec. (c) (3). Pub.L. 86–372, § 807 (2), inserted proviso making the provisions of subsec. (c) (3) inapplicable to any project which is consolidated under a single contract with one or more low-rent projects being assisted under the United States Housing Act of 1937, and permitting the commingling of income from such project with funds of the project or projects with which it is consolidated.

Ex.Ord.No.10284. Extension of Time. Subsec. (a) (1) was affected by Ex.Ord.No. 10284, Sept. 4, 1951, to extend time for request for conveyance of housing projects from Dec. 31, 1950 to Dec. 31, 1951.

Ex.Ord.No.10339. Extension of Time. Subsec. (a) (1) was affected by Ex.Ord.No. 10339, Apr. 7, 1952, to extend time for request for conveyance of housing projects from Dec. 31, 1951 to Dec. 31, 1952.

Subsec. (a) (3) was affected by Ex.Ord. No.10339, Apr. 7, 1952 to extend time for entering agreements with the Public Housing Administration from June 30, 1952 to June 30, 1953. Said Ex.Ord. is set out as a note under section 1589a of this title.

Ex.Ord.No.10425. Extension of Time. Subsec. (a) (1) was affected by Ex.Ord. No.10425, Jan. 16, 1953, to extend time for request for conveyance of housing projects from Dec. 31, 1952 to June 30, 1953.

Subsec. (a) (3) was affected by Ex.Ord. No.10284 to extend time for entering agreements with the Public Housing Administration from June 30, 1951 to June 30, 1952. Said Ex.Ord. is set out as a note under section 1589a of this title.

Legislative History: For legislative history and purpose of Pub.L. 86–372, see 1959 U.S.Code Cong. and Adm.News, p. 2844.

Cross References

Extension of dates for disposal of other actions relating to housing under this chapter, see section 1589a of this title.

Notes of Decisions

Library references

United States ⇐58.
C.J.S. United States §§ 75, 79.
C.J.S. Warehousemen and Safe Depositories § 60.

1. Judicial review

Whether conditions precedent prescribed by this section authorizing Public Housing Administration to dispose of defense housing projects have been met involves exercise of discretion by executive branch of government, acting through Public Housing Administrator, not subject to judicial review. Breen v. Housing Authority of City of Pittsburgh, D.C.Pa. 1954, 119 F.Supp. 320.

§ 1587. Disposition of other permanent war housing—Public interest

(a) The Administrator shall, subject to the provisions of this section, dispose of permanent war housing, other than housing con-

veyed pursuant to section 1586 of this title, as promptly as practicable and in the public interest.

Preference in sales to individuals

(b) Preference in the purchase of any dwelling structure designed for occupancy by not more than four families and offered for separate sale shall be granted to occupants and to veterans over other prospective purchasers for such period as the Administrator may determine and in the following order:

(1) a veteran who occupies a unit in the dwelling structure to be sold and who intends to continue to occupy such unit;

(2) a nonveteran who occupies a unit in the dwelling structure to be sold and who intends to continue to occupy such unit;

(3) a veteran who intends to occupy a unit in the dwelling structure to be sold.

Subject to the above order of preference, the Administrator may establish subordinate preferences for any such dwelling structure. In the disposition of any dwellings under this section which were acquired by the United States from persons occupying the dwellings at the time of such acquisition, the Administrator may, notwithstanding the order of preference provided in this section, grant a first preference to such persons in the purchase of any of these dwellings for such period and under such conditions as he may determine to be appropriate and in the public interest. As used in this subsection, the term "veteran" shall include a veteran, a serviceman, or the family of a veteran or a serviceman, or the family of a deceased veteran or serviceman whose death has been determined by the Veterans' Administration to be service-connected.

Preference in sales of projects

(c) In the case of any housing project required by this section to be disposed of, which is not offered for separate sale of separate dwelling structures designed for occupancy by not more than four families, such project may be sold as a whole or in such portions as the Administrator may determine. On such sales of an entire project or portions thereof consisting of more than one dwelling structure or of an individual dwelling structure designed for occupancy by more than four families, first preference shall be given for such period not less than ninety days nor more than six months from the date of the initial offering of such project or portions thereof as the Administrator may determine, to groups of veterans organized on a mutual ownership or cooperative basis (provided that any such group shall accept as a member of its organization, on the same terms, subject to the same conditions, and with the same privileges and responsibilities, required of, and extended to other members of the group any tenant occupying a dwelling unit in such project, portion thereof or building, at any time during such period as the

Administrator shall deem appropriate, starting on the date of the announcement by the Administrator of the availability of such project, portion thereof or building for sale), except that a first preference for said period of not less than ninety days nor more than six months shall be given to any group organized on a mutual or cooperative basis, which, with respect to its proposed purchase of a specific housing project or portions thereof, has, prior to August 1, 1949, been granted an exception by the Administrator from the sales preference provisions of Public Regulation 1 of the Housing and Home Finance Agency and has been designated as a preferred purchaser.

Equitable selection method for each preference class

(d) The Administrator shall provide an equitable method of selecting the purchasers to apply when preferred purchasers (or groups of preferred purchasers) in the same preference class or containing members in the same preference class compete with each other.

Veterans' preference

(e) Any housing disposed of in accordance with this section shall after such disposal be deemed to be housing accommodations the construction of which was completed after June 30, 1947, within the meaning of section 1884 of Appendix to Title 50, relating to preference or priority to veterans of World War II or their families.

Terms of sales

(f) Sales pursuant to this section shall be upon such terms as the Administrator shall determine: *Provided*, That full payment to the Government for the property sold shall be required within a period not exceeding twenty-five years with interest on unpaid balances at not less than 4 per centum per annum, except that in the case of projects initially programmed as mutual housing communities under the defense housing program, the terms of sale shall not require a down payment and shall provide for full payment to the United States over a period of forty-five years with interest on unpaid balances at not more than 3 per centum per annum.

Disregard of preferences in certain cases

(g) The Administrator may dispose of any permanent war housing without regard to the preferences in subsections (b) and (c) of this section when he determines that (1) such housing, because of design or lack of amenities, is unsuitable for family dwelling use, or (2) it is being used at the time of disposition for other than dwelling purposes, or (3) it was offered, with preferences substantially similar to those provided in the Housing Act of 1950, to veterans and occupants prior to April 20, 1950. Oct. 14, 1940, c. 862, Title VI, § 607, as added June 28, 1948, c. 688, § 7, as added Apr. 20, 1950, c. 94, Title II, § 201, 64 Stat. 59, and amended Mar. 10, 1954, c. 61, 68 Stat. 26; Aug. 2, 1954, c. 649, Title VIII, § 805(2), 68 Stat. 644.

Historical Note

References in Text. The Housing Act of 1950, referred to in subsec. (g), is Act Apr. 20, 1950, c. 94, 64 Stat. 48. For distribution of that Act in this Code, see Tables Volume.

1954 Amendments. Subsec. (b). Act Mar. 10, 1954, inserted in last par. the sentence permitting the Administrator to give, in the disposition of dwellings under this section which were acquired by the United States from persons occupying the dwellings at the time of such acquisition, a first preference to such persons in the purchase thereof.

Subsec. (g). Act Aug. 2, 1954 added subsec. (g).

Legislative History: For legislative history and purpose of Act Mar. 10, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2039.

Cross References

Extension of dates for disposal and other actions relating to housing under this chapter, see section 1589a of this title.

§ 1588. Sale of vacant land to local housing authorities; sale of personal property

(a) Notwithstanding any other provision of law, any land acquired under subchapters II–VII of this chapter or any other Act in connection with war or veterans' housing, but upon which no dwellings are located at the time of sale, may be sold at fair value, as determined by the Administrator, to any agency organized for slum clearance or to provide subsidized housing for persons of low income.

(b) Notwithstanding any other provision of law, any personal property held under subchapters II–VII of this chapter, and not sold with a project or building, may be sold at fair value, as determined by the Administrator, to any agency organized for slum clearance or to provide subsidized housing for persons of low income. Any sale of personal property under this subsection shall be made on a cash basis, payable at the time of settlement. Oct. 14, 1940, c. 862, Title VI, § 608, as added June 28, 1948, c. 688, § 7 as added Apr. 20, 1950, c. 94, Title II, § 201, 64 Stat. 59, and amended Aug. 11, 1955, c. 787, 69 Stat. 668.

Historical Note

References in Text. Subchapters II–VII of this chapter, referred to in subsecs. (a) and (b), in the original reads "this Act", meaning Act Oct. 14, 1940, which is set out in such subchapters.

1955 Amendment. Act Aug. 11, 1955 designated existing provisions as subsec. (a), and added subsec. (b).

Legislative History: For legislative history and purpose of Act Aug. 9, 1955, see 1955 U.S.Code Cong. and Adm.News, p. 2974.

§ 1589. Conveyance of land and nondwelling structures thereon to States for National Guard purposes

Notwithstanding any other provision of law, the Administrator is authorized to convey by quit claim deed, without consideration, to any

State for National Guard purposes any land, together with any nondwelling structures thereon, held under subchapters II–VII of this chapter or any other Act in connection with war or veterans' housing: *Provided*, That the United States shall be saved harmless from or reimbursed for such costs incidental to the conveyance as the Administrator may deem proper: *Provided further*, That the conveyance of such land shall contain the express condition that if the grantee shall fail or cease to use such land for such purposes, or shall alienate (or attempt to alienate) such land, title thereto shall, at the option of the United States, revert to the United States. Oct. 14, 1940, c. 862, Title VI, § 609, as added June 28, 1948, c. 688, § 7, as added Apr. 20, 1950, c. 94, Title II, § 201, 64 Stat. 59.

Historical Note

References in Text. Subchapters II–VII of this chapter, referred to in the text, in the original reads "this Act", meaning Act Oct. 14, 1940, which is set out in such subchapters.

§ 1589a. Extension by President of dates for disposal and other actions relating to housing under this subchapter

Notwithstanding any other provision of law, the President is authorized to extend, for such period or periods as he shall specify, the time within which any action is required or permitted to be taken by the Administrator or others under the provisions of this subchapter or section 1553 of this title (or any contract entered into pursuant thereto), upon a determination by him, after considering the needs of national defense and the effect of such extension upon the general housing situation and the national economy, that such extension is in the public interest. Oct. 14, 1940, c. 862, Title VI, § 611, as added Sept. 1, 1951, c. 378, Title VI, § 603(d), 65 Stat. 314, and amended July 14, 1952, c. 723, § 6, 66 Stat. 603.

Historical Note

1952 Amendment. Act July 14, 1952 inserted "or section 1553 of this title" immediately preceding the parenthetical clause and substituted "thereto" for "to this subchapter" in the parenthetical clause.

Legislative History: For legislative history and purpose of Act Sept. 1, 1951, see 1951 U.S.Code Cong.Service, p. 1716. See, also, Act July 14, 1952, 1952 U.S. Code Cong. and Adm.News, p. 2135.

EXECUTIVE ORDER NO. 10284
Sept. 4, 1951, 16 F.R. 8971

EXTENSIONS OF TIME RELATING TO THE DISPOSITION OF CERTAIN HOUSING

Ex.Ord.No.10284, which related to extensions of time for disposition of certain housing, was superseded by Ex.Ord. No.10339, Apr. 7, 1952, 17 F.R. 3012.

EXECUTIVE ORDER NO. 10339
Apr. 7, 1952, 17 F.R. 3012

EXTENSIONS OF TIME

1. The time stipulated in subsection (c) of section 601 of the Act [section 1581(c) of this title] on or before which requests must be filed under subsections (a), (b) and (g) of that section is extended to December 31, 1952.

2. The time stipulated in subsection (c) of section 601 of the Act [section 1581(c) of this title] on or before which all conditions to relinquishments or transfers pursuant to requests made under subsections (a), (b) and (g) of that section must be complied with is extended to June 30, 1953.

3. The time stipulated in section 604 of the Act [section 1584 of this title] after which vacancies occurring or continuing in temporary housing remaining under the jurisdiction of the Housing and Home Finance Administrator on land under his control may be filled only by transfer of tenants of other accommodations in the same locality being removed as required by the Act is extended to July 1, 1953.

4. The time stipulated in section 604 of the Act [section 1584 of this title] on or before which all tenants must be notified to vacate the premises is extended to March 31, 1954; and the time required to be stipulated in such notices prior to which the premises must be vacated is extended to July 1, 1954.

5. The time stipulated in section 604 of the Act [section 1584 of this title] promptly after which actions must be instituted to evict any tenants still remaining is extended to July 1, 1954.

6. The time stipulated in section 606 (a) (1) of the Act [section 1586(a) (1) of this title] on or before which conveyance of the housing projects listed in section 606(a) (3) of the Act [section 1586(a) (3) of this title] must be requested by the governing body of the municipality or county and on or before which the need for low-rent housing must be demonstrated to the satisfaction of the Administrator is extended to December 31, 1952.

7. The time stipulated in section 606 (a) (3) of the Act [section 1586(a) (3) of this title] on or before which the governing body of the municipality or county must enter into an agreement with the public housing agency satisfactory to the Public Housing Administration providing for local cooperation and payments in lieu of taxes and on or before which the public housing agency must enter into an agreement with the Public Housing Administration for the administration of any project requested under section 606 (a) of the Act [section 1586(a) of this title] is extended to June 30, 1953.

This order supersedes Executive Order 10284, dated September 1, 1951.

EXECUTIVE ORDER NO. 10385
Aug. 18, 1952, 17 F.R. 7525

EXTENSION OF TIME RELATING TO THE REMOVAL OF CERTAIN TEMPORARY HOUSING

The time stipulated in section 313 of the said act approved October 14, 1940, as amended [section 1553 of this title], within which, subject to the qualifications stated in the said section 313 [section 1553 of this title], housing of a temporary character under the jurisdiction of the Housing and Home Finance Administrator and constructed under certain laws must be removed is hereby extended from December 31, 1952, to July 1, 1954.

EXECUTIVE ORDER NO. 10395
Sept. 19, 1952, 17 F.R. 8449

EXTENSIONS OF TIME

1. The time stipulated in subsection (c) of section 601 of the Act [section 1581(c) of this title] on or before which requests must be filed under subsection (h) of that section is extended to December 31, 1952.

2. The time stipulated in subsection (c) of section 601 of the Act [section 1581 (c) of this title] on or before which all conditions to relinquishments or transfers pursuant to requests made under subsection (h) of that section must be complied with is extended to June 30, 1953.

EXECUTIVE ORDER NO. 10425
Jan. 16, 1953, 18 F.R. 405

EXTENSIONS OF TIME

1. The time stipulated in subsection (c) of section 601 of the act [section 1581 (c) of this title] on or before which requests must be filed under subsections (a), (b), (g), and (h) of that section is extended to June 30, 1953.

2. The time stipulated in section 606 (a) (1) of the act on or before which conveyance of the housing projects listed in section 606(a) (3) of the act [section 1586(a) (1) of this title] must be requested by the governing body of the municipality or county and on or before which the need for low-rent housing must be demonstrated to the satisfaction of the Administrator is extended to June 30, 1953.

This order supersedes paragraphs 1 and 6 of Executive Order No. 10339 of April 5, 1952 [set out as a note under this section] and paragraph 1 of Executive Order No. 10395 of September 18, 1952 [set out as a note under this section].

EXECUTIVE ORDER NO. 10462
June 22, 1953, 18 F.R. 3613

DELEGATION OF FUNCTIONS TO THE HOUSING AND HOME FINANCE ADMINISTRATOR

1. The Housing and Home Finance Administrator is hereby designated and empowered to perform, without the approval, ratification, or other action by the President, the functions vested in the President by section 611 of the act entitled "An Act to expedite the provision of housing in connection with national defense, and for other purposes," approved, October 14, 1940, as amended (42 U.S.C. 1589a) [this section].

2. The meaning of the terms "perform" and "functions" as used in this order shall be the same as the meaning of those terms as used in chapter 4 of title 3 of the United States Code.

§ 1589b. Establishment of income limitations for occupancy of housing; effect on prior tenants

The Administrator, notwithstanding any other provisions of subchapters II–VII of this chapter or any other law except provisions hereafter enacted expressly in amendment hereof, is authorized to establish income limitations for occupancy of any housing held by him under subchapters II–VII of this chapter and, giving consideration to the ability of such tenants to obtain other housing accommodations, to require tenants, admitted to occupancy prior to the establishment of such income limitations and who have incomes in excess of limitations established by him, to vacate such housing. Oct. 14, 1940, c. 862, Title VI, § 612, as added Sept. 1, 1951, c. 378, Title VI, § 603(d), 65 Stat. 314.

Library references: War and National Defense ⇐241; C.J.S. War and National Defense § 185.

Historical Note

References in Text. Subchapters II–VII of this chapter, referred to in the text, in the original reads "this Act", meaning Act Oct. 14, 1940, which is set out in such subchapters.

§ 1589c. Transfer of certain housing to Indians

Upon a certification by the Secretary of the Interior that any surplus housing, classified by the Administrator as demountable, in the area of San Diego, California, is needed to provide dwelling accommodations for members of a tribe of Indians in Riverside County or San Diego County or Imperial County, California, the Administrator is authorized, notwithstanding any other provision of law, to transfer and convey such housing without consideration to such tribe, the members thereof, or the Secretary of the Interior in trust therefor, as the Secretary may prescribe: *Provided*, That the term housing as used in this section shall not include land. Oct. 14, 1940, c. 862, Title VI, § 613, as added Aug. 2, 1954, c. 649, Title VIII, § 805(3), 68 Stat. 645.

§ 1589d. Undisposed housing—Disposal to highest bidder; rejection of bids; disposal by negotiation

(a) Notwithstanding the provisions of this or any other law, (1) any housing to be sold on-site determined by the Administrator to be permanent, located on lands owned by the United States and under the jurisdiction of the Administrator, which is not relinquished, transferred, under contract of sale, sold, or otherwise disposed of by the Administrator under other provisions of this subchapter or under the provisions of other law by January 1, 1957, except housing which is determined by the Administrator by that date to be suitable for sale in accordance with section 1587(b) of this title; and (2) any permanent housing to be sold off-site which is not relinquished, transferred, under contract of sale, sold, or otherwise disposed of prior to August 7, 1956, shall be disposed of, as expeditiously as possible, on a competitive basis to the highest responsible bidder upon such terms and after such public advertisement as the Administrator may deem in the public interest; except that the Administrator may reject any bid which he deems less than the fair market value of the property and may thereafter dispose of the property by negotiation.

Contracts; time for passage of title; termination of purchaser's rights

(b) Notwithstanding the provisions of this or any other law, all contracts entered into after August 7, 1956 for the sale, transfer, or other disposal of housing (other than housing subject to the provisions of section 1587(b) of this title) determined by the Administrator to be permanent, except contracts entered into pursuant to subsection (a) of this section, shall require that if title does not pass to the purchaser by April 1, 1957 (or within sixty days thereafter if such time is necessary to cure defects in title in accordance with the provisions of the contract), the rights of the purchaser shall terminate and thereafter the housing shall be sold under the provisions of subsection (a) of this section. For the purposes of this subsection,

title shall be considered to have passed upon the execution of a conditional sales contract.

Dates

(c) The dates set forth in subsections (a) and (b) of this section shall not be subject to change by virtue of the provisions of section 1589a of this title. Oct. 14, 1940, c. 862, Title VI, § 614, as added Aug. 7, 1956, c. 1029, Title IV, § 407(a), 70 Stat. 1106.

Historical Note

Codification. Subsecs. (b)–(e) of section 407, Act Aug. 7, 1956, were not classified to the Code.

Legislative History: For legislative history and purpose of Act Aug. 7, 1956, see 1956 U.S.Code Cong. and Adm.News, p. 4509.

§ 1590. Definitions

As used in this subchapter, the following terms shall have the meanings ascribed to them below, unless the context clearly indicates otherwise:

(a) The term "governing body of the municipality or county" means the governing body of the city, village, or other municipality having general governmental authority over the area in which the housing involved is located or, if the housing is not located in such a municipality, the term means the governing body of the county or parish in which the housing is located, or if the housing is located in the District of Columbia the term means the Board of Commissioners of said District.

(b) The term "housing" means any housing under the jurisdiction of the Administrator (including trailers and other mobile or portable housing) constructed, acquired, or made available under subchapters II–VII of this chapter or Public Law 781, Seventy-sixth Congress, approved September 9, 1940, or Public Laws 9, 73, or 353, Seventy-seventh Congress, approved, respectively, March 1, 1941, May 24, 1941, and December 17, 1941, or any other law, and includes in addition to dwellings any structures, appurtenances, and other property, real or personal, acquired for or held in connection therewith.

(c) The term "temporary housing" means any housing (as defined in (b)) which the Administrator has determined to be "of a temporary character" pursuant to subchapters II–VII of this chapter and shall also include any such housing after rights thereto have been relinquished or transferred under this subchapter or section 1575 of this title.

(d) The terms "veteran" and "serviceman" mean "veteran" and "serviceman" as those terms are defined in the United States Housing Act of 1937.

(e) The term "State" means any State, Territory, dependency, or possession of the United States, or the District of Columbia.

(f) The term "going Federal rate of interest" means "going Federal rate" as that term is defined in the United States Housing Act of 1937.

(g) The term "United States Housing Act of 1937" means the provisions of that Act, including all amendments thereto, now or hereafter adopted, except provisions relating to the initial construction of a project or dwelling units. Oct. 14, 1940, c. 862, Title VI, § 610, as added June 28, 1948, c. 688, § 7, as added Apr. 20, 1950, c. 94, Title II, § 201, 64 Stat. 59.

Historical Note

References in Text. Public Law 781, Seventy-sixth Congress, approved September 9, 1940, referred to in subsec. (b), is Act Sept. 9, 1940, c. 717, 54 Stat. 872. Section 201 of Act Sept. 9, 1940 contains the provisions relating to the term Housing and is not classified to the Code.

Public Laws 9, 73, or 353, Seventy-seventh Congress, approved, respectively, Mar. 1, 1941, May 24, 1941, and Dec. 17, 1941, referred to in subsec. (b), Acts Mar. 1, 1941, c. 9, 55 Stat. 14; May 24, 1941, c. 132, 55 Stat. 197; Dec. 17, 1941, c. 591, 55 Stat. 810, respectively, are appropriation acts and are set out as notes under section 1523 of this title.

Subchapters II–VII of this chapter, referred to in subsecs. (b) and (c), in the original reads "this Act", meaning Act Oct. 14, 1940, which is set out in such subchapters.

The United States Housing Act of 1937, referred to in subsecs. (d), (f), (g), is classified to chapter 8 of this title.

Definition of "veteran" and "serviceman", referred to in subsec. (d), were eliminated in the amendment of section 1402(14) of this title by Pub.Law 87-70, Title II, § 202, June 30, 1961, 75 Stat. 163.

SUBCHAPTER VIII.—CRITICAL DEFENSE HOUSING AREAS

§ 1591. Determination of critical areas by President; requisite conditions

(a) Notwithstanding any other provisions of this Act, the authority contained in titles II or III of this Act shall not be exercised in any area unless the President shall have determined that such area is a critical defense housing area.

(b) No area shall be determined to be a critical defense housing area pursuant to this section unless the President finds that in such area all the following conditions exist:

(1) a new defense plant or installation has been or is to be provided, or an existing defense plant or installation has been or is to be reactivated or its operation substantially expanded;

(2) substantial in-migration of defense workers or military personnel is required to carry out activities at such plant or installation; and

(3) a substantial shortage of housing required for such defense workers or military personnel exists or impends which impedes or threatens to impede activities at such defense plant

or installation, or that community facilities or services required for such defense workers or military personnel are not available or are insufficient, or both, as the case may be.

Sept. 1, 1951, c. 378, Title I, § 101, 65 Stat. 293; June 30, 1953, c. 170, § 15, 67 Stat. 125.

Library references: War and National Defense ⇐203; C.J.S. War and National Defense § 134.

Historical Note

References in Text. "This Act", referred to in subsec. (a), refers to the Defense Housing and Community Facilities and Services Act of 1951, Act Sept. 1, 1951. Such Act is classified to the Code as follows: Title I, to this subchapter; Title II, to subchapter X of chapter 13 of Title 12, Banks and Banking, and to sections 371, 1430, 1702, 1715c, 1715f and 1716 of Title 12; Title III, to subchapter IX of this chapter; Title IV, to subchapter X of this chapter; Title V, to sections 371 and 1701g to 1701g–3, of Title 12; and Title VI, to sections 1701i—1, 1710, 1713, 1715d, 1715g, 1715h, 1716, 1747a, 1747f, 1747*l*, and 1748b of Title 12, to sections 1507, 1584, 1585, 1589a, 1589b, 1591 note, 1591d and 1593f of this title.

"Titles II, or III of this Act", referred to in subsec. (a), refer to such titles of Act Sept. 1, 1951. For distribution thereof, see preceding par. of this note.

1953 Amendment. Subsec. (a). Act June 30, 1953, substituted "titles II or III" for "titles II, III, or IV".

Short Title. Section 1 of Act Sept. 1, 1951, provided that "this Act" may be popularly known as the "Defense Housing and Community Facilities and Services Act of 1951". For distribution of "this Act", see References in Text note under this section.

Separability of Provisions, and Savings Clause. Act Sept. 1, 1951, § 618, second sentence, provided: "Notwithstanding any other evidence of the intention of Congress, it is hereby declared to be the controlling intent of Congress that if any provisions of this Act [for distribution of 'this Act', see References in Text note above], or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances, but shall be confined in its operation to the provisions of this Act or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered."

Inconsistent Laws. Section 617 of Act Sept. 1, 1951, provided: "Insofar as the provisions of any other law are inconsistent with the provisions of this Act [see References in Text note, above, for distribution of 'this Act'], the provisions of this Act shall be controlling."

Legislative History: For legislative history and purpose of Act Sept. 1, 1951, see 1951 U.S.Code Cong.Service, p. 1716. See, also, Act June 30, 1953, 1953 U.S. Code Cong. and Adm.News, p. 1806.

§ 1591a. Construction by private enterprise

In order to assure that private enterprise shall be afforded full opportunity to provide the defense housing needed wherever possible, in any area which the President, pursuant to the authority contained in section 1591 of this title, has declared to be a critical defense housing area—

Publication of number of units needed

(a) first, the number of permanent dwelling units (including information as to types, rentals, and general locations) needed for defense workers and military personnel in such critical defense housing area shall be publicly announced and printed in the Federal Register by the Housing and Home Finance Administrator;

Suspension of credit restrictions

(b) second, residential credit restrictions under the Defense Production Act of 1950, as amended, (1) as to housing to be sold at $12,000 or less per unit or to be rented at $85 or less per unit per month, shall be suspended with respect to the number and types of housing units at the sales prices or rentals which the President determines to be needed in such area for defense workers or military personnel, and (2) as to all other housing, shall be relaxed in such manner and to such extent as the President determines to be necessary and appropriate to obtain the production of such housing needed in such area for defense workers or military personnel;

Mortgage insurance

(c) third, the mortgage insurance aids provided under sections 371, 1430, 1702, 1715c, 1715f and 1716, and subchapter X of chapter 13 of Title 12 shall be made available to obtain the production of housing needed in such area for defense workers or military personnel; and

Construction by Government as conditional

(d) fourth, no permanent housing shall be constructed by the Federal Government under the provisions of subchapter IX of this chapter except to the extent that private builders or eligible mortgagees have not, within a period of not less than ninety days (as the Housing and Home Finance Administrator shall specify) following public announcement of the availability of such mortgage insurance aids under sections 371, 1430, 1702, 1715c, 1715f and 1716, and subchapter X of chapter 13 of Title 12, indicated through bona fide applications (which meet the requirements as to types, rentals or sales prices, and general locations) for exceptions from such residential credit restrictions or for mortgage insurance or guaranty that they will provide the housing determined to be needed in such area for defense workers and military personnel and publicly announced as provided by subsection (a) of this section. Sept. 1, 1951, c. 378, Title I, § 102, 65 Stat. 294.

Historical Note

References in Text. The Defense Production Act of 1950, as amended, referred to in par. (b), is classified to sections 2061–2166 of the Appendix to Title 50, War and National Defense. See section 2166 for termination of such Act, as amended.

§ 1591b. Community facilities or services by local agencies

In order to assure that community facilities or services required in connection with national defense activities shall, wherever possible, be provided by the appropriate local agencies with local funds, in any area which the President, pursuant to the authority contained

in section 1591 of this title, has declared to be a critical defense housing area—

(a) no loan shall be made pursuant to subchapter IX of this chapter for the provision of community facilities or equipment therefor required in connection with national defense activities in such area unless the chief executive officer of the appropriate political subdivision certifies, and the Housing and Home Finance Administrator finds, that such facilities or equipment could not otherwise be provided when needed;

(b) no grant or other payment shall be made pursuant to subchapter IX of this chapter for the provision, or for the operation and maintenance, of community facilities or equipment therefor, or for the provision of community services, required in connection with national defense activities in such area unless the chief executive officer of the appropriate political subdivision certifies, and the Housing and Home Finance Administrator finds, that such community facilities or services cannot otherwise be provided when needed, or operated and maintained, as the case may be, without the imposition of an increased excessive tax burden or an unusual or excessive increase in the debt limit of the appropriate local agency; and

(c) no community facilities or services shall be provided, and no community facilities shall be maintained and operated, by the United States directly except where the appropriate local agency is demonstrably unable to provide such facilities and services, or to maintain or operate such community facilities and services adequately with its own personnel, with loans, grants, or payments authorized to be made pursuant to subchapter IX of this chapter.

For the purposes of this section, the term "chief executive officer of the appropriate political subdivision" shall mean appropriate principal executive officer or governing body having primary responsibility with respect to the community facility or service involved, but shall not, in any case, mean any public housing authority, or its governing body, or any of its officers, acting in such capacity. Sept. 1, 1951, c. 378, Title I, § 103, 65 Stat. 294.

§ 1591c. Expiration date; exceptions

After June 30, 1953, no construction of permanent housing may be begun under subchapter IX of this chapter. After July 31, 1954, (a) no mortgage may be insured under subchapter X of chapter 13 of Title 12 (except (i) pursuant to a commitment to insure issued on or before such date or (ii) after July 31, 1954, and until August 1, 1955, during such period, or for such project or projects, as the President may designate hereunder or (iii) pursuant to a commitment to insure issued pursuant to the preceding clause (ii)), (b) no agree-

ment may be made to extend assistance for the provision of community facilities or services under subchapter IX of this chapter, and no construction of temporary housing or community facilities by the United States may be begun under such subchapter, except after July 31, 1954, and until August 1, 1955, during such period, or for such project or projects, as the President may designate hereunder: *Provided,* That, to the extent necessary to assure the adequate completion of any facilities for which prior agreements have been made under subchapter IX of this chapter, the Housing and Home Finance Administrator may, at any time after July 31, 1954, enter into amendatory agreements under such subchapter involving the expenditure of additional Federal funds within the balance available therefor on or before such date, (c) no loan may be made or obligations purchased by the Housing and Home Finance Administrator under section 1701g—1 of Title 12 (except pursuant to a commitment issued on or before June 30, 1953, or to refinance an existing loan or existing obligations held under such section by said Administrator on June 30, 1953). Sept. 1, 1951, c. 378, Title I, § 104, 65 Stat. 295; June 30, 1953, c. 170, § 16, 67 Stat. 125; June 29, 1954, c. 410, § 3, 68 Stat. 320; Aug. 2, 1954, c. 649, Title I, § 129, 68 Stat. 609; June 30, 1955, c. 251, § 2, 69 Stat. 225; Aug. 11, 1955, c. 783, Title I, § 105, 69 Stat. 637.

Historical Note

1955 Amendments. Act Aug. 11, 1955 inserted item (iii) in clause (a).

Act June 30, 1955 substituted "August 1, 1955" for "July 1, 1955" in two instances in the second sentence.

1954 Amendments. Act Aug. 2, 1954 gave the President standby authority to use mortgage insurance authority under subchapter X of chapter 13 of Title 12, and the provisions in subchapter IX of this chapter, for Federal aid in providing defense housing and community facilities and services in critical defense areas, in substitution for provisions under which authority for new projects under these two programs would have expired on June 30, 1954; and authorized the Housing and Home Finance Administrator to enter into amendatory agreements after June 30, 1954, to provide additional Federal assistance with respect to defense community facilities undertaken on or before such date where he found it necessary to do so to assure the adequate completion of such facilities.

Act June 29, 1954 substituted "July 31, 1954" for "June 30, 1954" at beginning of second sentence.

1953 Amendment. Act June 30, 1953, amended section by (1) inserting the sentence prohibiting the beginning of permanent housing construction under subchapter IX of this chapter, after June 30, 1953; (2) substituting "June 30, 1954" for "June 30, 1953" at beginning of present second sentence; (3) substituting "temporary housing" for "housing" in clause (b) of present second sentence; (4) striking a former clause (c) out of present second sentence, which provided that (after June 30, 1953) no land might be acquired by the Housing and Home Finance Administrator under subchapter X of this chapter; and (5), in the same sentence, relettering clause (d) as clause "(c)".

Legislative History: For legislative history and purpose of Act June 30, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 1806. See, also, Act June 30, 1955, 1955 U.S.Code Cong. and Adm.News, p. 2296.

§ 1591d. Powers as cumulative and additional

Except as may be otherwise expressly provided in this Act, all powers and authorities conferred by this Act shall be cumulative and

additional to and not in derogation of any powers and authorities otherwise existing. Sept. 1, 1951, c. 378, Title VI, § 618, 65 Stat. 317.

Historical Note

References in Text. "This Act", referred to in the text, refers to the Defense Housing and Community Facilities and Services Act of 1951, Act Sept. 1, 1951. For distribution of that Act in the Code, see note under section 1591 of this title.

Codification. Section constitutes the first sentence of section 618 of Act Sept. 1, 1951. Remainder of such section 618 is set out as a note under section 1591 of this title.

Legislative History: For legislative history and purpose of Act Sept. 1, 1951, see 1951 U.S.Code Cong.Service, p. 1716.

SUBCHAPTER IX.—DEFENSE HOUSING AND COMMUNITY FACILITIES AND SERVICES

Historical Note

Revolving Fund. Establishment of revolving fund under which to account for assets and liabilities in connection with community facilities or defense housing under sections 1592–1592o of this title, see section 1701g—5 of Title 12, Banks and Banking.

Expiration Date. After July 31, 1954, no agreements may be made to extend assistance for the provision of community facilities or services under this subchapter, and no construction of housing or community facilities by the United States may be begun under this subchapter. See section 1591c of this title.

§ 1592. Authority of Administrator

Subject to the provisions and limitations of sections 1591–1591c of this title, and of this subchapter, the Housing and Home Finance Administrator (hereinafter referred to as the "Administrator") is authorized to provide housing in any areas (subject to the provisions of section 1591 of this title) needed for defense workers or military personnel or to extend assistance for the provision of, or to provide, community facilities or services required in connection with national defense activities in any area which the President, pursuant to the authority contained in said section, has determined to be a critical defense housing area. Sept. 1, 1951, c. 378, Title III, § 301, 65 Stat. 303.

Library references: War and National Defense ⇐203; C.J.S. War and National Defense § 134.

Historical Note

Legislative History: For legislative history and purpose of Act Sept. 1, 1951, see 1951 U.S.Code Cong.Service, p. 1716.

§ 1592a. Construction of housing—Types, sales, preferences in purchases, and payment

(a) Consistent with other requirements of national defense, any permanent housing constructed pursuant to the authority of this subchapter shall consist of one- to four-family dwelling structures

(including row houses) so arranged that they may be offered for separate sale. All housing of permanent construction which is constructed or acquired under the authority of this subchapter shall be sold as expeditiously as possible and in the public interest taking into consideration the continuation of the need for such housing by persons engaged in national defense activities. All dwelling structures of permanent construction designed for occupancy by not more than four families (including row houses) shall be offered for sale, and preference in the purchase of any such dwelling structure shall be granted to occupants and to veterans over other prospective purchasers. As among veterans, preference in the purchase of any such dwelling structure shall be given to disabled veterans whose disability has been determined by the Veterans' Administration to be service-connected. All dwelling structures of permanent construction in any housing project which are designed for occupancy by more than four families (and other structures in such project which are not sold separately) shall be sold as an entity. On such sales first preference shall be given for such period not less than ninety days nor more than six months from the date of the initial offering of such project as the Administrator may determine, to groups of veterans organized on a mutual ownership or cooperative basis (provided that any such group shall accept as a member of its organization, on the same terms, subject to the same conditions, and with the same privileges and responsibilities, required of, and extended to, other members of the group any tenant occupying a dwelling unit in such project, at any time during such period as the Administrator shall deem appropriate, starting on the date of the announcement by the Administrator of the availability of such project). The Administrator shall provide an equitable method of selecting the purchasers when preferred purchasers (or groups of preferred purchasers) in the same preference class or containing members in the same preference class compete with each other. Sales pursuant to this section shall be for cash or credit, upon such terms as the Administrator shall determine, and at the fair value of the property as determined by him: *Provided*, That full payment to the Government for the property sold shall be required within a period of not exceeding twenty-five years with interest on unpaid balances at not less than 4 per centum per annum.

Temporary housing

(b) Where it is necessary to provide housing under this subchapter in locations where, in the determination of the Administrator, there appears to be no need for such housing beyond the period during which it is needed for housing persons engaged in national defense activities, the provisions of section 1591a of this title shall not be applicable and temporary housing which is of a mobile or portable character or which is otherwise constructed so as to be available for reuse at other locations or existing housing built or

acquired by the United States under authority of other law shall be provided. Any temporary housing constructed or acquired under this subchapter which the Administrator determines to be no longer needed for use under this subchapter shall, unless transferred to the Department of Defense pursuant to section 1592e of this title, or reported as excess to the Administrator of the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, as amended, be sold as soon as practicable to the highest responsible bidder after public advertising, except that if one or more of such bidders is a veteran purchasing a dwelling unit for his own occupancy the sale of such unit shall be made to the highest responsible bidder who is a veteran so purchasing: *Provided*, That the Housing and Home Finance Administrator may reject any bid for less than two-thirds of the appraised value as determined by him: *Provided further*, That the housing may be sold at fair value (as determined by the Housing and Home Finance Administrator) to a public body for public use: *And provided further*, That the housing structures shall be sold for removal from the site, except that they may be sold for use on the site if the governing body of the locality has adopted a resolution approving use of such structures on the site.

Preference in admission to occupancy pending ultimate disposition

(c) When the Administrator determines that any housing provided under this subchapter is no longer required for persons engaged in national defense activities, preference in admission to occupancy thereof shall be given to veterans pending its ultimate sale or disposition in accordance with the provisions of this subchapter. As among veterans, preference in admission to occupancy shall be given to disabled veterans whose disability has been determined by the Veterans' Administration to be service-connected. Sept. 1, 1951, c. 378, Title III, § 302, 65 Stat. 303; July 14, 1952, c. 723, § 5, 66 Stat. 602; Aug. 2, 1954, c. 649, Title VIII, § 806, 68 Stat. 645.

Historical Note

References in Text. The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (b), is classified to chapter 11C of Title 5, Executive Departments and Government Officers and Employees, chapter 10 of Title 40, Public Buildings, Property, and Works, section 5 and chapter 4 of Title 41, Public Contracts, and chapter 11 of Title 44, Public Printing and Documents.

1954 Amendment. Subsec. (b). Act Aug. 2, 1954 substituted in second sentence provisions prescribing the disposition procedure, for former provisions that the housing should "be disposed of by the Administrator not later than the date, and subject to the conditions and requirements, hereafter prescribed by the Congress * * *".

1952 Amendment. Subsec. (b). Act July 14, 1952 inserted "or existing * * * of other law" following "for reuse at other locations".

§ 1592b. Maximum construction costs; determinations by Administrator in certain condemnation proceedings

The cost per family dwelling unit for any housing project constructed under the authority of this subchapter shall not exceed an average of $9,000 for two-bedroom units in such project, $10,000 for three-bedroom units in such project, and $11,000 for four-bedroom units in such project: *Provided*, That the Administrator may increase any such dollar limitation by not exceeding $1,000 in any geographical area where he finds that cost levels so require: *Provided further*, That in the Territories and possessions of the United States the Administrator may increase any such dollar limitation by 50 per centum: *And provided further*, That for the purposes of this section the cost of any land acquired by the Administrator upon the filing of a declaration of taking in proceedings for the condemnation of fee title shall be considered to be the amount determined by the Administrator, upon the basis of competent appraisal, to be the value thereof. Sept. 1, 1951, c. 378, Title III, § 303, 65 Stat. 305.

§ 1592c. Loans or grants for community facilities or services; conditions; maximum amounts; annual adjustments

In furtherance of the purposes of this subchapter and subject to the provisions hereof, the Administrator may make loans or grants, or other payments, to public and nonprofit agencies for the provision, or for the operation and maintenance, of community facilities and equipment therefor, or for the provision of community services, upon such terms and in such amounts as the Administrator may consider to be in the public interest: *Provided*, That grants under this subchapter to any local agency for hospital construction may be made only after such action by the local agency to secure assistance under Public Law 725, Seventy-ninth Congress, approved August 13, 1946, as amended, or Public Law 380, Eighty-first Congress, approved October 25, 1949, as is determined to be reasonable under the circumstances, and only to the extent that the required assistance is not available to such local agency under said Public Law 725, or said Public Law 380, as the case may be: *Provided further*, That grants or payments for the provision, or for the maintenance and operation, of community facilities or services under this section shall not exceed the portion of the cost of the provision, or the maintenance and operation, of such facilities or services which the Administrator estimates to be attributable to the national defense activities in the area and not to be recovered by the public or nonprofit agency from other sources, including payments by the United States under any other provisions of this Act or any other law: *And, provided further*,

That any such continuing grant or payment shall be reexamined and adjusted annually upon the basis of the ability of the agency to bear a greater portion of the cost of such maintenance, operation, or services as a result of increased revenues made possible by such facility or by such defense activities. Sept. 1, 1951, c. 378, Title III, § 304, 65 Stat. 305.

Historical Note

References in Text. Public Law 725, Seventy-ninth Congress, approved Aug. 13, 1946, as amended, referred to in the text, is Act Aug. 13, 1946, c. 958, 60 Stat. 1040, which is classified to sections 2 note, 16 note, 98 note, 201 notes, 209, 214 note, 230, 249 note, 291, 291 note, and 291a–291m of this title, sections 757, 790 and 800 of Title 5, Executive Departments and Government Officers and Employees, sections 72 and 711(9) of Title 31, Money and Finance, section 763c of Title 33, Navigation and Navigable Waters, section 654 of Title 46, Shipping, section 508 of Title 48, Territories and Insular Possessions, and sections 177 and 181 of Title 49, Transportation.

Public Law 380, Eighty-first Congress, approved Oct. 25, 1949, referred to in the text, is Act Oct. 25, 1949, c. 722, 63 Stat. 898, which is classified to section 291, 291 notes, 291d, 291f–291j and 291n of this title.

"This Act", referred to in the text, refers to the Defense Housing and Community Facilities and Services Act of 1951, Act Sept. 1, 1951. For distribution of that Act in the Code, see note under section 1591 of this title.

Hospital Construction; Revival and Extension of Loan and Grant of Authority; Expiration Date; Appropriation. Section 605 of Act Aug. 7, 1956, c. 1029, 70 Stat. 1114, as amended by Pub.L. 86-372, Title VIII, § 804, Sept. 23, 1959, 73 Stat. 687; Pub.L. 87-70, Title IX, § 906, June 30, 1961, 75 Stat. 191, provided that:

"(a) Notwithstanding the provisions of section 104 of the Defense Housing and Community Facilities and Services Act of 1951 [section 1591c of this title], the authority under section 304 of such Act [this section] to make loans or grants, or other payments to public and nonprofit agencies for the construction of hospitals is hereby revived and extended with respect to public and nonprofit agencies which have, prior to June 30, 1953, applied under such section 304 [this section] for such loans or grants, or other payments for the construction of hospitals, and have been denied such loans or grants, or other payments solely because of the unavailability of funds for such purpose.

"(b) The authority granted by this section shall expire June 30, 1962.

"(c) There is hereby authorized to be appropriated the sum of $5,000,000 for the purposes of this section for each of the fiscal years ending June 30, 1957, and June 30, 1958, and the sum of $7,500,000 for the purposes of this section for each of the fiscal years ending June 30, 1960, June 30, 1961, and June 30, 1962."

§ 1592d. Administrator's powers with respect to housing, facilities, and services—Planning, acquisition, construction, etc.

(a) With respect to any housing or community facilities or services which the Administrator is authorized to provide, or any property which he is authorized to acquire, under this Act, the Administrator is authorized by contract or otherwise (without regard to section 1339 of Title 10, section 5 of Title 41, section 278a of Title 40, the Federal Property and Administrative Services Act of 1949, as amended, and prior to the approval of the Attorney General) to make plans, surveys, and investigations; to acquire (by purchase, donation, condemnation or otherwise), construct, erect, extend, re-

model, operate, rent, lease, exchange, repair, deal with, insure, maintain, convey, sell for cash or credit, demolish, or otherwise dispose of any property, land, improvement, or interest therein; to provide approaches, utilities, and transportation facilities; to procure necessary materials, supplies, articles, equipment, and machinery; to make advance payments for leased property; to pursue to final disposition by way of compromise or otherwise, claims both for and against the United States (exclusive of claims in excess of $5,000 arising out of contracts for construction, repairs, and the purchase of supplies and materials, and claims involving administrative expenses) which are not in litigation and which have not been referred to the Department of Justice; and to convey without cost to States and political subdivisions and instrumentalities thereof property for streets and other public thoroughfares and easements for public purposes: *Provided,* That any instrument executed by the Administrator and purporting to convey any right, title or interest in any property acquired pursuant to this subchapter or subchapter X of this chapter shall be conclusive evidence of compliance with the provisions thereof insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. Notwithstanding any provisions of this Act, housing or community facilities constructed by the United States pursuant to the authority contained herein shall conform to the requirements of State and local laws, ordinances, rules, or regulations relating to health and sanitation, and, to the maximum extent practicable, taking into consideration the availability of materials and the requirements of national defense, any housing or community facilities, except housing or community facilities of a temporary character, constructed by the United States pursuant to the authority contained herein shall conform to the requirements of State or local laws, ordinances, rules, or regulations relating to building codes.

Condemnation

(b) Before condemnation proceedings are instituted pursuant to this subchapter or subchapter X of this chapter, an effort shall be made to acquire the property involved by negotiation unless, because of reasonable doubt as to the identity of the owner or owners, because of the large number of persons with whom it would be necessary to negotiate, or for other reasons, the effort to acquire by negotiation would involve, in the judgment of the Administrator, such delay in acquiring the property as to be contrary to the interest of national defense. In any condemnation proceeding instituted pursuant to this subchapter or subchapter X of this chapter, the court shall not order the party in possession to surrender possession in advance of final judgment unless a declaration of taking has been filed, and a deposit of the amount estimated to be just compensation has been made, under section 258a of Title 40, providing for such declarations. Unless title is in dispute, the court, upon application, shall promptly pay to the owner at least 75 per centum of the

amount so deposited, but such payment shall be made without prejudice to any party to the proceeding.

Return to original owner in certain cases

(c) If any real property acquired under this subchapter or subchapter X of this chapter is retained after June 30, 1954, without having been used for the purposes of this Act, the Administrator shall, if the original owner desires the property and pays the fair value thereof, return such property to the owner. In the event the Administrator and the original owner do not agree as to the fair value of the property, the fair value shall be determined by three appraisers, one of whom shall be chosen by the Administrator, one by the original owner, and the third by the first two appraisers; the expenses of such determination shall be paid in equal shares by the Government and the original owner. Sept. 1, 1951, c. 378, Title III, § 305, 65 Stat. 305; June 30, 1953, c. 170, § 17, 67 Stat. 125.

Historical Note

References in Text. "This Act", referred to in subsecs. (a) and (c), refers to the Defense Housing and Community Facilities and Services Act of 1950, Act Sept. 1, 1951. For distribution of that Act in the Code, see note under section 1591 of this title.

Section 1339 of Title 10, referred to in subsec. (a), was repealed by Act Aug. 10, 1956, c. 1041, § 53, 70A Stat. 641. Similar provisions now appear in sections 4774 and 9774 of Title 10, Armed Forces.

Reference to section 5 of Title 41 deemed reference to section 252(c) of Title 41, see section 260(b) of Title 41, Public Contracts.

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (a), is classified to chapter 11C of Title 5, Executive Departments and Government Officers and Employees, chapter 10 of Title 40, Public Buildings, Property and Works, section 5 and chapter 4 of Title 41, Public Contracts, and chapter 11 of Title 44, Public Printing and Documents.

1953 Amendment. Subsec. (c). Act June 30, 1953, substituted "June 30, 1954" for "June 30, 1953".

Legislative History: For legislative history and purpose of Act June 30, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 1806.

Notes of Decisions

1. Return of property

This section providing that where real property has been acquired for public housing without having been so used, Administrator should, if original owner desires property and pays fair value thereof return it to him did not authorize termination of Government's leasehold upon payment of fair market value of improvements where land had been devoted to temporary public housing and where Government desired to dispose of units. U. S. v. Certain Parcels of Land in City of Cheyenne, Laramie County, Wyo., D.C.Wyo.1956, 141 F.Supp. 300.

§ 1592e. Inter-agency transfers of property; application of rules and regulations

Any Federal agency may, upon request of the Administrator, transfer to his jurisdiction without reimbursement any lands, improved or unimproved, or other property real or personal, considered

by the Administrator to be needed or useful for housing or community facilities, or both, to be provided under this subchapter, and the Administrator is authorized to accept any such transfers. The Administrator may also utilize any other real or personal property under his jurisdiction for the purpose of this subchapter without adjustment of the appropriations or funds involved. Any property so transferred or utilized, and any funds in connection therewith, shall be subject only to the authorizations and limitations of this subchapter. The Administrator may, in his discretion, upon request of the Secretary of Defense or his designee, transfer to the jurisdiction of the Department of Defense without reimbursement any land, improvements, housing, or community facilities constructed or acquired under the provisions of this subchapter and considered by the Department of Defense to be required for the purposes of the said Department. Upon the transfer of any such property to the jurisdiction of the Department of Defense, the laws, rules, and regulations relating to property of the Department of Defense shall be applicable to the property so transferred, and the provisions of this subchapter and the rules and regulations issued thereunder shall no longer apply. Sept. 1, 1951, c. 378, Title III, § 306, 65 Stat. 306.

§ 1592f. Preservation of local civil and criminal jurisdiction, and civil rights; jurisdiction of State courts

Notwithstanding any other provisions of law, the acquisition by the United States of any real property pursuant to this subchapter or subchapter X of this chapter shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property, or impair the civil or other rights under the State or local law of the inhabitants of such property. Any proceedings by the United States for the recovery of possession of any property or project acquired, developed, or constructed under this subchapter or subchapter X of this chapter may be brought in the courts of the States having jurisdiction of such causes. Sept. 1, 1951, c. 378, Title III, § 307, 65 Stat. 307.

Library references: Venue ⇐61; C.J.S. Venue §§ 158–168.

§ 1592g. Payment of annual sums to local authorities in lieu of taxes

The Administrator shall pay from rentals annual sums in lieu of taxes and special assessments to any State and/or political subdivision thereof, with respect to any real property, including improvements thereon, acquired and held by him under this subchapter for residential purposes (or for commercial purposes incidental thereto), whether or not such property is or has been held in the exclusive jurisdiction of the United States. The amount so paid for any year upon such property shall approximate the taxes and special as-

sessments which would be paid to the State and/or subdivision, as the case may be, upon such property if it were not exempt from taxation and special assessments, with such allowance as may be considered by him to be appropriate for expenditures by the Federal Government for the provision or maintenance of streets, utilities, or other public services to serve such property. Sept. 1, 1951, c. 378, Title III, § 308, 65 Stat. 307.

§ 1592h. Conditions and requirements as to contracts; utilization of existing facilities; disposition of facilities constructed by United States

In carrying out this subchapter—

(a) notwithstanding any other provisions of this subchapter, so far as is consistent with emergency needs, contracts shall be subject to section 5 of Title 41;

(b) the cost-plus-a-percentage-of-cost system of contracting shall not be used, but contracts may be made on a cost-plus-a-fixed-fee basis: *Provided,* That the fixed fee shall not exceed 6 per centum of the estimated cost;

(c) wherever practicable, existing private and public community facilities shall be utilized or such facilities shall be extended, enlarged, or equipped in lieu of constructing new facilities; and

(d) all right, title, and interest of the United States in and to any community facilities constructed by the United States pursuant to the authority contained in this subchapter shall (if such agency is willing to accept such facility and operate the same for the purpose for which it was constructed) be disposed of to the appropriate State, city, or other local agency having responsibility for such type of facility in the area not later than one year after June 30, 1953, and subject to the conditions and requirements hereafter prescribed by the Congress.

Sept. 1, 1951, c. 378, Title III, 309, 65 Stat. 307.

Library references: United States ⇐58; C.J.S. United States §§ 75, 79; C.J.S. Warehousemen and Safe Depositories § 60.

Historical Note

References in Text. Reference to section 5 of Title 41 in par. (a) deemed reference to section 252(c) of Title 41, see section 260(b) of Title 41, Public Contracts.

§ 1592i. Laborers and mechanics—Wages; overtime

(a) Notwithstanding any other provision of law, the wages of every laborer and mechanic employed on any construction, maintenance, repair, or demolition work authorized by this subchapter shall

be computed on a basic day rate of eight hours per day and work in excess of eight hours per day shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

Applicability of other laws

(b) The provisions of the Davis-Bacon Act, as amended; of section 874 of Title 18; and of section 276c of Title 40, shall apply in accordance with their terms to work pursuant to this subchapter.

Stipulations in loan contracts as to wages; certification

(c) Any contract for loan or grant, or both, pursuant to this subchapter shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, as amended, shall be paid to all laborers and mechanics employed in the construction of the project at the site thereof; and the Administrator shall require certification as to compliance with the provisions of this subsection prior to making any payment under such contract.

Reports by contractors and subcontractors to Secretary of Labor

(d) Any contractor engaged in the development of any project financed in whole or in part with funds made available pursuant to this subchapter shall report monthly to the Secretary of Labor, and shall cause all subcontractors to report in like manner, within five days after the close of each month and on forms to be furnished by the United States Department of Labor, as to the number of persons on their respective payrolls on the particular project, the aggregate amount of such payrolls, the total man-hours worked, and itemized expenditures for materials. Any such contractor shall furnish to the Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable.

Prescription of standards, regulations, and procedures by Secretary of Labor

(e) The Secretary of Labor shall prescribe appropriate standards, regulations, and procedures, which shall be observed by the Administrator in carrying out the provisions of this subchapter (and cause to be made by the Department of Labor such investigations) with respect to compliance with and enforcement of the labor standards provisions of this section, as he deems desirable. Sept. 1, 1951, c. 378, Title III, § 310, 65 Stat. 307.

Library references: War and National Defense ⇐401 et seq.; C.J.S. War and National Defense § 196.

Historical Note

References in Text. The Davis-Bacon Act, as amended, referred to in subsecs. (b) and (c), is classified to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works.

§ 1592j. Disposition of moneys derived from rentals, operation, and disposition of property

Moneys derived from rentals, operation, or disposition of property acquired or constructed under the provisions of this subchapter shall be available for expenses of operation, maintenance, improvement, and disposition of any such property, including the establishment of necessary reserves therefor and administrative expenses in connection therewith: *Provided*, That such moneys derived from rentals, operation, or disposition may be deposited in a common fund account or accounts in the Treasury: *And provided further*, That the moneys in such common fund account or accounts shall not exceed $5,000,000 at any time, and all moneys in excess of such amount shall be covered into miscellaneous receipts. Sept. 1, 1951, c. 378, Title III, § 311, 65 Stat. 308.

Library references: United States ⇐82; C.J.S. United States § 122.

§ 1592k. Determination of fair rentals and classes of occupants by Administrator

The Administrator shall fix fair rentals based on the value thereof as determined by him which shall be charged for housing accommodations operated under this subchapter and may prescribe the class or classes of persons who may occupy such accommodations, preferences, or priorities in the rental thereof, and the terms, conditions, and period of such occupancy. Sept. 1, 1951, c. 378, Title III, § 312, 65 Stat. 308.

Library references: War and National Defense ⇐209; C.J.S. War and National Defense § 140 et seq.

§ 1592l. Appropriations

There are authorized to be appropriated—

(a) such sums, not exceeding $100,000,000, as may be necessary for carrying out the provisions and purposes of this subchapter relating to community facilities and services in critical defense housing areas; and

(b) such sums, not exceeding $100,000,000, as may be necessary for carrying out the provisions and purposes of this subchapter relating to housing in critical defense housing areas.

Sept. 1, 1951, c. 378, Title III, § 313, 65 Stat. 308; July 14, 1952, c. 723, § 4, 66 Stat. 602.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

1952 Amendment. Subsec. (a). Act July 14, 1952, increased the appropriation authorization from $60,000,000 to $100,000,000. Subsec. (b). Act July 14, 1952 increased the appropriation authorization from $50,000,000 to $100,000,000.

§ 1592m. Transfer of functions and funds in certain cases

Subject to all of the limitations and restrictions of this Act, including, specifically, the requirements of subsection (c) of section 1591b of this title and of subsections (c) and (d) of section 1592h of this title, where any other officer, department, or agency is performing, or, in the determination of the President, has facilities adapted to the performance of, functions, powers and duties similar, or directly related, to any of the functions, powers and duties which the Housing and Home Finance Administrator is authorized by this subchapter to perform with respect to the construction, maintenance or operation of community facilities for recreation, and day-care centers, or the provision of community services, the President may transfer to such other officer, department, or agency any of the functions, powers, and duties authorized by this subchapter to be performed with respect thereto if he finds that such transfer will assist the furtherance of national defense activities, and upon any such transfer, funds in such amount as the Director of the Bureau of the Budget shall determine, but in no event in excess of the balance of any moneys appropriated to the Housing and Home Finance Administrator pursuant to the authorization therefor contained in this subchapter for the performance of the transferred functions, powers, and duties, may also be transferred by the President to such other officer, department, or agency: *Provided*, That the President, by Executive Order or otherwise, may prescribe or direct the manner in which any functions, powers, and duties, which the Housing and Home Finance Administrator is authorized by this subchapter to perform with respect to assistance for the construction, or the construction of, any community facilities, shall be administered in coordination with other officers, departments, or agencies having functions or activities related thereto. Sept. 1, 1951, c. 378, Title III, § 314, 65 Stat. 308.

Historical Note

References in Text. "This Act", referred to in the text, refers to the Defense Housing and Community Facilities and Services Act of 1951, Act Sept. 1, 1951. For distribution of that Act in the Code, see note under section 1591 of this title.

EXECUTIVE ORDER NO. 10296

Oct. 3, 1951, 16 F.R. 10103, as amended by Ex.Ord.No. 10461, June 18, 1953, 18 F.R. 3513; Ex.Ord.No. 10593, Jan. 27, 1955, 20 F.R. 599; Ex.Ord.No. 10773, July 1, 1958, 23 F.R. 5061; Ex.Ord.No. 10782, Sept. 8, 1958, 23 F.R. 6971; Ex.Ord.No. 11051, Sept. 28, 1962, 27 F.R. 9683

PERFORMANCE OF DEFENSE HOUSING FUNCTIONS

1. The Director of the Office of Emergency Planning is hereby designated and empowered to perform, without the approval, ratification, or other action of the President, the function vested in the President by section 101 of the said Defense Housing and Community Facilities and Services Act of 1951 [section 1591 of this title] of determining critical defense-housing areas and of making the findings relative to such determinations required by section 101(b) of the said Act [section 1591(b) of this title].

2. The Director of the Office of Emergency Planning is hereby designated and

empowered to perform, without the approval, ratification, or other action of the President, the functions vested in the President by section 104 of the Defense Housing and Community Facilities and Services Act of 1951, as amended [section 1591c of this title] (which Act, as amended, is hereinafter referred to as the Act), relative to the designation of periods during which, and relative to the designation of projects for which:

(1) Mortgages may be insured under Title IX of the National Housing Act, as amended [sections 1750–1750g of Title 12].

(2) Agreements may be made to extend assistance for the provision of community facilities or services under Title III of the Act [sections 1592–1592o of this title].

(3) The construction of temporary housing or community facilities may be begun by the United States under Title III of the Act [sections 1592–1592o of this title].

(a) The authority vested in the President by section 401 of the Act [section 1593 of this title] to define defense installations, and to make findings that in connection with any defense installation developed or to be developed in an isolated or relatively isolated area (1) housing or community facilities needed for such installation would not otherwise be provided when and where required or (2) there would otherwise be speculation or uneconomic use of land resources which would impair the efficiency of defense activities at such installation.

(b) The authority vested in the President by section 402 of the Act [section 1593a of this title] to make findings that it is necessary or desirable in the public interest that land shall be acquired by the Housing and Home Finance Administrator not only for the purposes of section 401 of the Act [section 1593 of this title], but also for the defense installation to be served thereby.

3. The Housing and Home Finance Administrator is hereby designated and empowered to perform, without the approval, ratification, or other action of the President, the function vested in the President by section 102(b) of the Act [section 1591a(b) of this title], relative to the suspension and relaxation of residential credit restrictions under the Defense Production Act of 1950, as amended [50 App. §§ 2061–2166].

4. Except as provided in paragraph 5 hereof, the functions authorized by Title III of the Act [sections 1592–1592o of this title] to be performed with respect to or in furtherance of the provision, maintenance, or operation of community facilities for, and with respect to or in furtherance of the provision of community services for, recreation and child day-care centers are hereby transferred to the Federal Security Administrator and shall be performed by him or by such officers and units of the Federal Security Agency as he may determine.

5. There are hereby excluded from the tranfers effected by paragraph 4 hereof (a) functions with respect to site selection and land acquisition for, and the construction (including the letting of construction contracts, the preparation and approval of plans and specifications, and the supervision of construction work and of expenditures therefor) of, projects approved by the Federal Security Administrator, whether such construction is performed on behalf of, or is aided by, the Federal Government, (b) the servicing of loans for the construction of projects so approved, and (c) the functions under the second and third provisos of section 304 of the Act [section 1592c of this title] and those under sections 103(a) and 103(b) of the Act [sections 1591b(a) and (b) of this title]: Provided, that (1), the Federal Security Administrator or his delegate shall determine the general layout, size, and special design features appropriate to the particular type of facility and (2) that final plans and specifications shall conform to such determinations.

6. In the performance of functions with respect to roads and highways under the Act, the Housing and Home Finance Administrator shall from time to time consult with the Secretary of Commerce or his representative as to the relationship of road and highway projects under the said Act to road and highway programs under the jurisdiction of the said Secretary.

7. In the performance of functions under Title III of the Act [sections 1592–1592o of this title] in Territories there shall be consultation with the Secretary of the Interior or his representative as to the relationship of proposed facilities and services in Territories to Territorial programs of the Department of the Interior.

8. The Housing and Home Finance Administrator, in connection with the performance of the pertinent functions vested in him by Title III of the Act [sections 1592–1592o of this title], shall obtain the approval of the Surgeon General of the Public Health Service or his representative with respect to the

public health aspects of sources of water supply developed, utilized, or aided by the said Administrator, and shall consult with the Surgeon General or his representative with respect to the public health aspects of water distribution systems and sewerage systems constructed or aided by the Administrator.

9. Subject to the consent of the Housing and Home Finance Administrator, the Surgeon General of the Public Health Service shall utilize the facilities and services of the Housing and Home Finance Agency for the performance of the following aspects of the functions conferred upon him by section 316 of the Act [section 1592*o* of this title]: (a) the construction by the Federal Government of projects approved by the Surgeon General (including the letting of construction contracts, the preparation or review of plans and specifications, and the supervision of construction work and expenditures therefor), (b) land acquisition for projects to be so constructed, and (c) the obtaining of information required for the purpose of, and the furnishing of recommendations with respect to, (i) the findings provided for in sections 103(a) and 103(b) of the Act [sections 1591b(a) and (b) of this title], and (ii) the actions provided for in the second and third provisos of section 304 of the Act [section 1592c of this title]. The Surgeon General shall pay the Housing and Home Finance Agency for such utilization, either in advance or otherwise, out of funds available to him for the performance of such functions.

10. Subject to the consent of the Federal Security Administrator, the Housing and Home Finance Administrator shall utilize the facilities and services of the Federal Security Agency in connection with the providing of library facilities under Title III of the Act [sections 1592–1592*o* of this title] in such manner that the division of work with respect to library facilities as between the Housing and Home Finance Administrator and the Federal Security Administrator will be the same as that with respect to recreation and child day-care center facilities as indicated in paragraphs 4 and 5 of this order. The Housing and Home Finance Administrator shall pay the Federal Security Administrator for such utilization, either in advance or otherwise, out of funds available to the Housing and Home Finance Administrator for the performance of the functions involved.

11. Paragraphs 9 and 10 shall not be construed as a limitation upon the Surgeon General or the Housing and Home Finance Administrator, as the case may be, with respect to utilization or delegation other than that referred to in such paragraphs and not inconsistent with the provisions of such paragraphs, respectively, or as divesting either the Surgeon General or the Administrator of any function conferred upon him by the Act.

12. As used in this order the term "functions" embraces duties, powers, responsibilities, authority, or discretion, and the term "perform" may be construed to mean "exercise".

§ 1592n. Definitions

As used in this subchapter, the following terms shall have the meanings respectively ascribed to them below, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular number:

(a) "State" shall mean the several States, the District of Columbia, and Territories, and possessions of the United States.

(b) "Federal agency" shall mean any executive department or officer (including the President), independent establishment, commission, board, bureau, division, or office in the executive branch of the United States Government, or other agency of the United States, including corporations in which the United States owns all or a majority of the stock, directly or indirectly.

(c) "Community facility" shall mean waterworks, sewers, sewage, garbage and refuse disposal facilities, police and fire protection facilities, public sanitary facilities, works for treatment and purifi-

cation of water, libraries, hospitals and other places for the care of the sick, recreational facilities, streets and roads, and day-care centers.

(d) "Community service" shall mean the maintenance and operation of facilities for health, refuse disposal, sewage treatment, recreation, water purification, and day-care centers, and the provision of fire-protection.

(e) "National defense" shall mean (1) the operations and activities of the armed forces, the Atomic Energy Commission, or any other Government department or agency directly or indirectly and substantially concerned with the national defense, (2) other operations and activities directly or indirectly and substantially concerned with the operations and activities of the armed forces and the Atomic Energy Commission, (3) activities in connection with the Mutual Defense Assistance Act of 1949, as amended, or (4) the provision of community facilities or services necessary to the health, safety, or public welfare of the inhabitants of a town or community which has been relocated as a result of the acquisition (through eminent domain or purchase in lieu thereof) of its former site by or on behalf of the Atomic Energy Commission for national-defense activities.

(f) "Nonprofit agency" shall mean any agency no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(g) "Project" shall mean housing or community facilities acquired, developed, or constructed with financial assistance pursuant to this subchapter.

(h) "Veteran" shall mean a person, or the family of a person, who has served in the active military or naval service of the United States at any time (i) on or after September 16, 1940, and prior to July 26, 1947, (ii) on or after April 6, 1917, and prior to November 11, 1918, or (iii) on or after June 27, 1950, and prior to such date thereafter as shall be determined by the President, and who shall have been discharged or released therefrom under conditions other than dishonorable or who shall be still serving therein. The term shall also include the family of a person who served in the active military or naval service of the United States within any such period and who shall have died of causes determined by the Veterans' Administration to have been service-connected. Sept. 1, 1951, c. 378, Title III, § 315, 65 Stat. 309; June 30, 1953, c. 170, § 18, 67 Stat. 126.

Historical Note

References in Text. The Mutual Defense Assistance Act of 1949, as amended, referred to in subsec. (e), was formerly classified to chapter 20 of Title 22, Foreign Relations and Intercourse, and was repealed by Act Aug. 26, 1954, c. 937, Title V, § 542(a) (5), (9)–(11), 68 Stat. 861. See chapter 32 of Title 22.

1953 Amendment. Subsec. (e) (4). Act June 30, 1953 added clause (4).

Legislative History: For legislative history and purpose of Act June 30, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 1806.

§ 1592o. Powers of Surgeon General of Public Health Service

Notwithstanding any other provision of this subchapter, all functions, powers, and duties under this subchapter and section 1591b of this title with respect to health, refuse disposal, sewage treatment, and water purification shall be exercised by and vested in the Surgeon General of the Public Health Service: *Provided*, That the Surgeon General shall have power to delegate to any other Federal agency functions, powers, and duties with respect to construction. Sept. 1, 1951, c. 378, Title III, § 316, 65 Stat. 310.

Library references: Health ⇐7(3); C.J.S. Health § 9 et seq.

SUBCHAPTER X.—DEVELOPMENT SITES FOR ISOLATED DEFENSE INSTALLATIONS

Historical Note

Expiration Date. After June 30, 1953, no land may be acquired by the Housing and Home Finance Administrator under this subchapter. See section 1591c of this title.

§§ 1593–1593d. Repealed. June 30, 1953, c. 170, § 19, 67 Stat. 126

Historical Note

Sections, Act Sept. 1, 1951, c. 378, Title IV, §§ 401–405, 65 Stat. 310, 311, dealt with provision and development of sites for housing and community facilities to serve new defense installations in isolated areas.

Section 1593 was amended by Act July 14, 1952, c. 723, § 10(d), 66 Stat. 604.

§ 1593e. Housing of persons displaced by acquisition of property for defense installations or industries

Upon a finding by the Housing and Home Finance Administrator that the acquisition of any real property for a defense installation or industry has resulted, or will result, in the displacement of persons from their homes on such property, he may (notwithstanding any other provision of this or any other law) issue regulations pursuant to which such persons may be permitted to occupy or purchase housing for which credit restrictions established pursuant to the Defense Production Act of 1950 have been relaxed or housing which has been provided or assisted under the provisions of this Act (including amendments to other Acts provided herein), subject to any conditions or requirements that he determines necessary for purposes of national defense. Sept. 1, 1951, c. 378, Title VI, § 611, 65 Stat. 316.

Library references: War and National Defense ⇐241; C.J.S. War and National Defense § 185.

Historical Note

References in Text. Word "this" in the words "this or any other law" and "this Act", referred to in the text, refers to the Defense Housing and Community Facilities and Services Act of 1951, Act Sept. 1, 1951. For distribution of that Act in the Code, see note under section 1591 of this title.

The Defense Production Act of 1950, referred to in the text, is classified to sections 2061-2166 of the Appendix to Title 50, War and National Defense. See section 2166 for termination of such Act.

For "amendments to other Acts provided herein", meaning amendments made by Act Sept. 1, 1951, see Tables Volume.

Legislative History: For legislative history and purpose of Act Sept. 1, 1951, see 1951 U.S.Code Cong.Service, p. 1716.

SUBCHAPTER XI.—HOUSING FOR MILITARY PERSONNEL

§ 1594. Contracts for construction—Contract provisions; competitive bids

(a) The Secretary of Defense or his designee is authorized to enter into contracts with any eligible bidder to provide for the construction of urgently needed housing on lands owned or leased by the United States and situated on or near a military reservation or installation for the purpose of providing suitable living accommodations for military personnel of the armed services assigned to duty at the military installation at or in the area where the housing is situated. Any such contract shall provide that each housing unit in the project shall be placed under the control of the Secretary of Defense, or his designee, as soon as the unit is available for occupancy as determined by the Commissioner. Any such contract shall also provide that, except for stock held by the Commissioner, the capital stock of the mortgagor (where the mortgagor is a corporation) be transferred to the Secretary of Defense, or his designee, when the housing has been completed as determined by the Commissioner. Any such contract shall contain such terms and conditions as the Secretary may determine to be necessary to protect the interests of the United States. Any such contract shall provide for the furnishing by the contractor of a performance bond and a payment bond with a surety or sureties satisfactory to the Secretary of Defense, or his designee, and the furnishing of such bonds shall be deemed a sufficient compliance with the provisions of section 270a of Title 40, and no additional bonds shall be required under such section. Before the Secretary shall enter into any contract as authorized by this section for the construction of housing, he shall invite the submission of competitive bids after advertising in the manner prescribed in section 152 of Title 41.

Definition of "eligible bidder"

(b) For the purposes of this subchapter, the term "eligible bidder" means a person, partnership, firm, or corporation determined by the Secretary after consultation with the Commissioner (1) to be

qualified by experience and financial responsibility to construct housing of the type described in subsection (a) of this section, and (2) to have submitted the lowest acceptable bid.

Acquisition of capital stock of property covered by mortgage

(c) Notwithstanding any other provision of law, the Secretary of Defense or his designee is authorized to acquire the capital stock of mortgagors holding property covered by a mortgage insured under title VIII of the National Housing Act, as amended by the Housing Amendments of 1955, and to exercise the rights as holder of such capital stock during the life of such mortgage and, upon the termination of the mortgage, to dissolve the corporation; to guarantee the payment of notes or other legal instruments required by the Commissioner of such mortgagors; to make payments thereon; and to guarantee and indemnify the Armed Services Housing Mortgage Insurance Fund against loss in cases where so required. All housing facilities placed under the control of the Secretary of Defense pursuant to the provisions of this subchapter shall be deemed to be housing facilities under the jurisdiction of the military department to which they are assigned.

Opinion as to title to property; guarantee; title search and title insurance

(d) On request by the Secretary of Defense, the Attorney General shall furnish to the Secretary of Defense, or his designee, an opinion as to the sufficiency of title to any property on which it is proposed to construct housing, or on which housing has been constructed, under this section. If the opinion of the Attorney General is that the title to any such property is good and sufficient, the Secretary of Defense is authorized to guarantee, or enter into a commitment to guarantee, the mortgagee, under a mortgage on such property which is insured under sections 1748–1748g and 1748h—1 to 1748h—3 of Title 12, against any losses that may thereafter arise from adverse claims to title. None of the proceeds of any mortgage loan hereafter insured under such sections 1748–1748g and 1748h—1 to 1748h—3 of Title 12 shall be used for title search and title insurance costs: *Provided,* That if the Secretary of Defense, or his designee, determines in the case of any housing project, that the financing of the construction of such project is impossible unless title insurance is provided, the Secretary may provide for the payment of the reasonable costs necessary for obtaining title search and title insurance. Any payments by the Secretary hereunder shall be made from the revolving fund established under section 1594a(g) of this title. Any determination by the Secretary under the foregoing proviso shall be set forth in writing, together with the reasons therefor. The Committees on Armed Services of the Senate and House of Representatives shall be promptly notified of each such determination, and of the amount of any payment made by the Secretary for title search and title insurance costs. Aug. 11, 1955, c. 783,

Title IV, § 403, 69 Stat. 651; Aug. 7, 1956, c. 1029, Title V, §§ 506 (b)–(d), 507, 70 Stat. 1110; Aug. 10, 1959, Pub.L. 86–149, Title IV, § 415, 73 Stat. 323.

Historical Note

References in Text. Section 152 of Title 41, referred to in subsec. (a), was repealed by Act Aug. 10, 1956, c. 1041, § 53, 70A Stat. 641 and is covered by section 2305 of Title 10, Armed Forces.

Title VIII of the National Housing Act, as amended by the Housing Amendments of 1955, referred to in subsec. (c), refers to Title VIII of Act June 27, 1934, c. 847 as amended by Act Aug. 11, 1955, § 401, classified to sections 1748–1748g, and former sections 1748g—1 and 1748h of Title 12, Banks and Banking.

Section 1594a(g) of this title, referred to in subsec. (d), was repealed by Pub.L. 87-554, Title V, § 501(d), July 27, 1962, 76 Stat. 237.

1959 Amendment. Subsec. (d). Pub.L. 86–149 added subsec. (d).

1956 Amendment. Subsec. (a). Act Aug. 7, 1956, §§ 506(b), (c), (d), and 507, substituted "eligible bidder" for "eligible builder" in the first sentence; substituted "the mortgagor" for "the builder" in two places in the third sentence; inserted provision before the last sentence, relating to furnishing by contractor of a performance bond and a payment bond with surety satisfactory to Secretary; and eliminated from last sentence, the words "with any builder" which followed words "Before the Secretary shall enter into any contract".

Subsec. (b). Act Aug. 7, 1956, § 506(b), substituted "eligible bidder" for "eligible builder".

Savings Provisions. Section 408 of Act Aug. 11, 1955, as amended by Act Aug. 7, 1956, § 511, provided that: "Notwithstanding the provisions of section 401 of this Act [this section], the provisions of title VIII of the National Housing Act [sections 1748–1748h of Title 12, Banks and Banking] in effect prior to the enactment of the Housing Amendments of 1955 [August 11, 1955] shall continue in full force and effect with respect to all mortgages insured pursuant to a certification by the Secretary of Defense or his designee made on or before June 30, 1955, and a commitment to insure issued on or before June 30, 1956 or pursuant to a certification by the Atomic Energy Commission or its designee made on or before June 30, 1956, except that the maximum dollar amount for each such mortgage shall be $12,500,000. Nothing contained in the provisions of title VIII of the National Housing Act in effect prior to August 11, 1955 [sections 1748–1748h of Title 12], or any related provision of law, shall be construed to exempt from State or local taxes or assessments the interest of a lessee from the Federal Government in or with respect to any property covered by a mortgage insured under such provisions of title VIII [sections 1748–1748h of Title 12]: Provided, That no such taxes or assessments (not paid or encumbering such property or interest prior to June 15, 1956) on the interest of such lessee shall exceed the amount of taxes or assessments on other similar property of similar value, less such amount as the Secretary of Defense or his designee determines to be equal to (1) any payments made by the Federal Government to the local taxing or other public agencies involved with respect to such property, plus (2) such amount as may be appropriate for any expenditures made by the Federal Government or the lessee for the provision or maintenance of streets, sidewalks, curbs, gutters, sewers, lighting, snow removal or any other services or facilities which are customarily provided by the State, county, city, or other local taxing authority with respect to such other similar property: And provided further, That the provisions of this section shall not apply to properties leased pursuant to the provisions of section 805 of the National Housing Act as amended on or after August 11, 1955 [section 1748d of Title 12], which properties shall be exempt from State or local taxes or assessments."

Legislative History: For legislative history and purpose of Act Aug. 7, 1956, see 1956 U.S.Code Cong. and Adm.News, p. 4509.

Cross References

Armed Services Housing Insurance Fund, see section 1748a of Title 12, Banks and Banking.

Formal advertisements for bids; time; opening; award; rejection, see section 2305 of Title 10, Armed Forces.

Notes of Decisions

Library references

United States ⇐60.
C.J.S. United States § 83.

1. Construction with other laws

This section and sections 270a–270d of Title 40 are in pari materia and only one bond for military personnel housing projects is required, subject to the approval of that bond by Secretary of Defense or his designee. Autrey v. Williams & Dunlap, D.C.La.1962, 210 F.Supp. 491.

The provisions of this section requiring the furnishing of a Capehart payment bond and that it shall be deemed a sufficient compliance with section 270a of Title 40 incorporate by reference provisions of section 270b of Title 40 thus allowing one furnishing material and not standing in too remote a relationship, to sue on a payment bond furnished under section 270a of Title 40 or furnished in compliance therewith under the provisions of this section for the amount allegedly due, and hence the court had jurisdiction of a suit upon a Capehart bond by a materialman furnishing materials used by subcontractor in heating system on government construction housing project for military personnel. U. S. to Use of Acme Furnace Fitting Co. v. Fort George G. Meade Defense Housing Corp. No. 1, D.C. Md.1960, 186 F.Supp. 639.

The Miller Act, sections 270a–270d of Title 40, and subsection (a) of this section are harmonious, and only one performance bond is required where construction of a public building is contracted. Autrey v. Williams & Dunlap, D.C.La.1960, 185 F. Supp. 802.

Supplier of labor and materials to subcontractor on military housing project being constructed in New Jersey under the Capehart Housing Act could bring its action in New Jersey State court on the contractor's payment bond which had been accepted as satisfactory by the Secretary of Defense or his designee and which allowed State court action thereon, as against contention that the Miller Act, sections 270a–270d of Title 40, was applicable and required that the action be brought only in federal court. Minneapolis-Honeywell Regulator Co. v. Terminal Const. Corp., 1964, 197 A.2d 557, 41 N.J. 500.

Bond under this section is not controlled by Miller Act, sections 270a–270d of Title 40. Ireland's Lumber Yard v. Progressive Contractors, Inc., N.D.1963, 122 N.W.2d 554.

2. Purpose

Purpose of this section was to provide urgently needed housing for military personnel on government property. Continental Cas. Co. v. U. S. for Use and Benefit of Robertson Lumber Co., C.A. N.D.1962, 305 F.2d 794, certiorari denied 83 S.Ct. 290, 371 U.S. 922, 9 L.Ed.2d 231.

The protection accorded by Miller Act. sections 270a–270d of Title 40, and this section is in many instances identical; both are an attempt to protect laborers and materialmen on government project, where they may have no rights under state lien laws; to this extent the two acts can be interpreted together and the district court will do so except in those cases where the Miller Act, sections 270a–270d of Title 40, or the cases decided under it are contradicted by the Capehart Act, this section, the cases decided under it, or the terms, of the bond. National State Bank of Newark v. Terminal Const. Corp., D.C.N.J.1963, 217 F.Supp. 341, affirmed 328 F.2d 315.

3. Law governing

Rules of decision developed under Miller Act, sections 270a–270d of Title 40,

and Heard Act, section 1594 of this title are applicable to Capehart bond suits. D & L Const. Co. v. Triangle Elec. Supply Co., C.A.Mo.1964, 332 F.2d 1009.

An action against prime contractor and its surety to recover on payment bonds for work and labor performed on Capehart housing project is not governed by procedural provisions of Miller Act, sections 270a–270d of Title 40. National State Bank of Newark v. Terminal Const. Corp., D.C.N.J.1963, 217 F.Supp. 341, affirmed 328 F.2d 315.

Recovery of interest, costs and attorneys' fees as to construction of project for government with bond given under this section was governed by law of Louisiana where contract was to be performed. Autrey v. Williams & Dunlap, D.C.La.1962, 210 F.Supp. 491.

4. Loan guaranties

The loan guaranties of the Secretary of Defense or his designee under subsec. (c) of this section, constitute valid obligations of the United States. 1959, 41 Op. Atty.Gen., October 22.

The validity of an obligation incurred on behalf of the United States is not affected by the failure of this section to contain express language pledging the faith and credit of the United States nor by the absence of an existing appropriation of funds for the payment of such obligations. Id.

5. Bonds generally

Bonds under sections 270a–270d of Title 40 and Capehart bonds are both designed to protect parties furnishing labor and material used on federally sponsored projects. D & L Const. Co. v. Triangle Elec. Supply Co., C.A.Mo.1964, 332 F.2d 1009.

Purpose of provision of amendment to this section that furnishing of bonds thereunder would be deemed sufficient compliance with Miller Act, sections 270a–270d of Title 40, was merely to clarify bonding requirements imposed upon contractors, showing intent that no additional bond or security above those required by Miller Act, section 270a of Title 40, be required on military housing project authorized by this section, and amendment did not reveal congressional intent to change established law that provisions of Miller Act, 270a of Title 40, must be read into any and all payment bonds. U. S. for Use and Benefit of Fine v. Travelers Indem. Co., D.C.Mo.1963, 215 F.Supp. 455.

Congress could not have intended that there be 50 different state law measures of liability on identical government bonds required for construction of housing projects built for military personnel of the United States. Id.

Where housing contract was based upon and entered into pursuant to this section respecting contracts for construction of housing for military personnel and in compliance with the section the contract explicitly provided for the payment bond, the bond was a Capehart Act bond. U. S. to Use of Acme Furnace Fitting Co. v. Fort George G. Meade Defense Housing Corp. No. 1, D.C.Md.1960, 186 F.Supp. 639.

The 1956 amendment to this section requiring furnishing of a payment bond and providing that if furnished, it shall be deemed "a sufficient compliance" with the provisions of the Miller Act, sections 270a–270d of Title 40 indicates that prior to such amendment, Congress considered that such housing contracts required the furnishing of a Miller Act bond, but that subsequent to the amendment, the furnishing of a payment bond upon terms and with sureties satisfactory to the Secretary of Defense was sufficient. Id.

This section authorizing Secretary of Defense to contract for construction of housing for military personnel and requiring that contractor furnish a performance bond satisfactory to Secretary of Defense makes mandatory the requirement that bond be satisfactory to the Secretary in those instances where contract involves construction of housing for military personnel. Autrey v. Williams & Dunlap, D. C.La.1960, 185 F.Supp. 802.

Materialmen were entitled to recover under payment bond for material furnished in connection with a housing project without proof of amount of materials delivered for use in each particular building where payment bonds each secured payment for all materials furnished in prosecution of work provided for in the the contract, contractor had one contract with the government covering all the houses, and one contract with materialmen for the materials. Allsop Lumber Co. v. Continental Cas. Co., 1963, 385 P.2d 625, 73 N.M. 64.

6. Approval of bonds

This section respecting contracts for construction of housing for military personnel merely makes mandatory that the bond required be satisfactory to the Secretary of Defense. U. S. to Use of Acme Furnace Fitting Co. v. Fort George G. Meade Defense Housing Corp. No. 1, D.C. Md.1960, 186 F.Supp. 639.

7. United States as obligee

The Miller Act, sections 270a-270d of Title 40, and this section contemplate bonds in which United States is obligee, and court lacks jurisdiction under section 1352 of Title 28 giving district court original jurisdiction, concurrent with state courts, of any action on a bond executed under any law of the United States, when bond names a private corporation as obligee. U. S. for Use of General Acc. Fire & Life Assur. Corp. v. Maguire Homes, Inc., D.C.Mass1959, 186 F.Supp. 659.

8. Prime contractors and subcontractors

De facto prime contractor, under subcontract covering entire federal housing project, would be treated as prime contractor, and nominal prime contractor would be disregarded, as to claims arising from termination of housing project contract where government had assented to subcontract and had settled with de facto prime contractor a large part of claims arising from termination of contract and had paid other subcontractors through de facto prime contractor. G. L. Christian and Associates v. U. S., Ct. Cl.1963, 312 F.2d 418, reargument denied 320 F.2d 345, certiorari denied 84 S.Ct. 444, 375 U.S. 954, 11 L.Ed.2d 314, rehearing denied 84 S.Ct. 657, 376 U.S. 929, 11 L.Ed. 2d 627.

Prime Capehart contractor which accepted throughout course of performance the fact that joint venturers to whom work was subcontracted had entrusted acceptance of work at site to a coadventurer could not assert in action on Capehart bonds by assignee of claims of work site laborers that such laborers were employees of sub-subcontractor within rule that employees of sub-subcontractor cannot recover on a Capehart bond. National State Bank of Newark v. Terminal Const. Corp, D.C.N.J.1963, 217 F.Supp. 341, affirmed 328 F.2d 315.

Employees of a sub-subcontractor cannot recover on Capehart bond. Id.

9. Substantial performance

Subcontractor, which substantially performed subcontract, was entitled to recover from prime contractor and surety on bond given under this section the full contract price, less amount necessary to correct deficiencies so as to bring subcontract performance into exact compliance with subcontract. Autrey v. Williams & Dunlap, D.C.La.1962, 210 F.Supp. 491.

10. Termination of contracts

Termination article required by Armed Services Procurement Regulations would be read into contract for federal housing project at federal fort where it had been expected that quarters allowance to military personnel assigned to fort would pay off construction loans, and loans had been insured by Federal Housing Administration, and therefore, upon government's termination of contract, de facto prime contractor and its subcontractors could not recover unearned but anticipated profits and would be allowed profits only under formula in standard termination clause. G. L. Christian and Associates v. U. S., Ct.Cl.1963, 312 F.2d 418, reargument denied 320 F.2d 345, certiorari denied 84 S.Ct. 444, 375 U.S. 954, 11 L.Ed. 2d 314, rehearing denied 84 S.Ct. 657, 376 U.S. 929, 11 L.Ed.2d 627.

11. Liens for labor and materials

Those furnishing labor and materials during project construction under this section may assert liens under state law against property. U. S. for Use and Benefit of Miles Lumber Co. v. Harrison & Grimshaw Const. Co., C.A.Kan.1962, 305 F.2d 363, certiorari denied 83 S.Ct. 287, 371 U.S. 920, 9 L.Ed.2d 229.

12. Taxation

Wherry rental housing project for military personnel operated by quasi-private corporation which held a leasehold of government land on which project was built was used for "public purposes" and corporation was entitled to deduction from real estate taxes of payments by United States to or for benefit of county for maintenance of streets, sidewalks, curbs, etc., in housing project. Board of Sup'rs of Norfolk County, Va. v. Stanley Bender & Associates, Inc., D.C.Va.1961, 201 F.Supp. 839.

This subchapter with respect to military housing does not express congressional intent to immunize mortgagor-builder corporations from a properly levied state sales tax. Murray v. State, Wash.1963, 384 P.2d 337.

Mortgagor-builder corporations which were formed by contractors in connection with construction of military housing under this subchapter and which, by express terms of contract with United States, were obligated to pay contractors from mortgage loan were "buyers" within sales tax statute and United States was not buyer and, therefore, constitutional immunity of United States from taxation was not applicable to situation. Id.

Mortgagor-builder corporations which had been formed in connection with construction of military housing were not agencies of United States, notwithstanding fact that United States ultimately gained ownership of corporations' capital stock, and corporations were not immune from state sales tax. Id.

13. Valuation, determination

The capitalization of income method for determination of value of property contemplates that property is in good condition, capable of producing income to be capitalized, and if property is not in good condition, proper allowance must be made for cost of needed repairs and replacements. Buena Vista Homes, Inc. v. U. S., C.A.N.M.1960, 281 F.2d 476.

Where reserve fund held by mortgagee of Wherry Act housing project on military reservation, to assure that mortgagor would make necessary repairs and replacements, had been returned to mortgagee, commissioners in making award upon condemnation of project properly deducted entire cost of necessary repairs and replacements from capitalization of income figure to arrive at fair market value. Id.

The reproduction cost less depreciation method could not properly be applied to valuation of Wherry Act housing project erected upon military reservation, in determining award for its condemnation. Id.

14. Persons entitled to protection

As a general rule, the courts tend to give a broad construction to the class of people entitled to protection under Capehart payment bond. National State Bank of Newark v. Terminal Const. Corp., D.C.N.J.1963, 217 F.Supp 341, affirmed 328 F.2d 315.

The protection afforded to laborers by bonds of Capehart prime contractor did not extend to one of joint venturers to whom work was subcontracted or to certified public accountant hired on a two-day a week basis for internal auditing, accounting and preparing payroll tax returns, but did extend to site office manager and the few employees who worked under him in daily active support of all phases of performance including satisfying of daily complaints and demands of prime contractor. Id.

Trustees of welfare and pension funds may be claimants under bonds given by prime contractor on Capehart housing project. Id.

15. Parties

Assignee of laborers' claims was real party in interest and could sue on its own name on Capehart bonds and suit did not have to be brought in name of United States. National State Bank of Newark v. Terminal Const. Corp., D.C. N.J.1963, 217 F.Supp. 341, affirmed 328 F.2d 315.

It is only in cases where United States is obligee that suit on Capehart bond must be brought in name of United States. Id.

16. Assignments

That contractor on Capehart housing project had not complied with New Jersey assumed name statute. N.J.S.A. 56:1–2, did not bar assignee of subcontractor's employees from suing on Capehart bonds, where the defendants knew who the principals behind the subcontractor were and dealt with them from day to day. National State Bank of Newark v. Terminal Const. Corp., D.C.N.J.1963, 217 F.Supp. 341, affirmed 328 F.2d 315.

Non-assignable provisions of Capehart housing project subcontract did not prevent assignments of wage claims of subcontractor's employees, since the assignments were not of the contract or of any rights under the contract but were of rights under the Capehart bonds, which rights were not governed by the contract. Id.

Assignments executed in favor of bank during the period it handed pay envelopes to subcontractor's workers employed on Capehart housing project were valid and binding insofar as the proofs established that the signators were accorded protection under the Capehart bonds. Id.

17. Notice provisions

Provisions of Capehart bonds were valid although they were in fact more stringent than notice requirements of Miller Act, sections 270a–270d of Title 40. Continental Cas. Co. v. U. S. for Use and Benefit of Robertson Lumber Co., C.A. N.D.1962, 305 F.2d 794, certiorari denied 83 S.Ct. 290, 371 U.S. 922, 9 L.Ed.2d 231.

Thirty-day demand on Capehart housing project subcontractor was not prerequisite to recovery of attorney fees from (insolvent) subcontractor's surety where, under circumstances, such demand would have been vain and useless. Kesk, Inc. v. National Union Indem. Co., D.C. La.1963, 224 F.Supp. 766.

Notice provisions of bond executed in connection with housing construction un-

der Capehart Housing Act and requiring that, as condition precedent to instituting action, claimant must have given written notice to "any two of the following: The Principal, any one of the Obligees, or the Sureties," where the claimant only gave notice to principal, such failure of claimant precluded recovery on bond. U. S. for Use and Benefit of Robertson Lumber Co. v. Cedric Sanders Co., D.C. N.D.1963, 223 F.Supp. 435.

A subcontractor was not entitled to sue under this section on a contractor's bond where his notice did not comply with the bond requirements, even though his notice did satisfy requirements of the Miller Act, sections 270a–270d of Title 40. U. S. for Use and Benefit of Fogle v. Hal B. Hayes & Associates, Inc., D.C.Cal.1963, 221 F.Supp. 260.

In general, notice provisions of Capehart bonds must be strictly construed, as they are conditions precedent to right to sue on bonds. National State Bank of Newark v. Terminal Const. Corp., D.C.N. J.1963, 217 F.Supp. 341, affirmed 328 F.2d 315.

Notice provisions of Capehart bonds were applicable in action to recover on bonds for work and labor performed on Capehart housing project; the notice provisions of the Miller Act, sections 270a–270d of Title 40, were inapplicable. Id.

Although Capehart bonds require that notice be sent by registered mail, this is not necessary if claimant can show that the notice was actually received. Id.

Filing of a claim of lien was sufficient compliance with notice requirements of a contractor's payment bond issued to comply with this subchapter where bond provided that either the giving of notice or the filing of lien would be sufficient notice, and giving of notice in addition to filing of the claim of lien was unnecessary. Allsop Lumber Co., v. Continental Cas. Co., 1963, 385 P.2d 625, 73 N.M. 64.

18. Jurisdiction

Congress has intended that exclusive federal jurisdiction continue with respect to statutory bonds written for United States government military housing project, and no state court has jurisdiction of action on Capehart bond. Travis Equipment Co. v. D & L Const. Co. & Associates, D.C.Mo.1963, 224 F.Supp. 410.

Since state court did not have jurisdiction of suits on Capehart bonds, suits removed to federal district court were dismissed for lack of jurisdiction. Id.

State district court had jurisdiction in suit on payment bond issued by sureties on Capehart housing project, where bond prohibited suit being commenced other than in state court in subdivision of state in which project was situated or federal district court for district in which project was situated, and exclusive jurisdiction was not in federal district court. Ireland's Lumber Yard v. Progressive Contractors, Inc., N.D.1963, 122 N.W. 2d 554.

19. Venue

Any construction of bond provisions that suit had to be brought in state court for county or subdivision in which project, or part thereof, was situated or United States District Court for District in which project, or part thereof, was situated which would change well established methods by which federal courts are authorized to acquire jurisdiction of person in actions on government bonds would be oppressive and unreasonable. U. S. for Use and Benefit of Fine v. Travelers Indem. Co., D.C.Mo.1963, 215 F.Supp. 455.

The venue provisions of section 270b of Title 40 do not apply to bonds executed under this section. Northwest Lumber Sales, Inc. v. S. S. Silberblatt, Inc., D.C. Mo.1962, 211 F.Supp. 749.

Where plaintiff suing on performance and payment bonds executed under this section was a Washington corporation, defendant was a New York corporation and was doing business in Missouri where its registered agent was located, and defendant indemnity company was a Connecticut corporation which maintained an office in St. Louis, court was not bound by provision in bonds regulating venue, and hence action was properly maintained in district court for eastern district of Missouri notwithstanding fact that project upon which bonds were given was located in western district of Missouri United States district court. Id.

20. Estoppel

Evidence, in action under bond required by this section failed to establish that surety was estopped from relying upon notice requirements set forth in its bond. U. S. for Use and Benefit of Fogle v. Hal B. Hayes & Associates, Inc., D.C. Cal.1963, 221 F.Supp. 260.

21. Limitations

Capehart bonds which followed language of Miller Act, sections 270a–270d of Title 40, to extent of providing that no suit be commenced after expiration of one year but changing day from which

year was to be measured from day on which last of labor was performed or material was supplied, as provided by said sections 270a–270d, to day on which principal ceased work on contract were governed by limitation period of section 270b of Title 40. Travis Equipment Co. v. D & L Const. Co. & Associates, D.C.Mo. 1963, 224 F.Supp. 410.

Suits or actions on Capehart bonds were actions based on bond required by law of United States, and governed by Miller Act, sections 270a–270d of Title 40, which expressly limits cause of action to one year after day on which last of labor was performed or material was supplied, and life of cause of action could not be extended by inserting conflicting provision in bond without Congressional authority. Id.

22. Burden of proof

Each particular plaintiff in action under this section is required to plead and prove that his particular materials went into portion of project covered by specified bond and cannot be relieved from such obligation on any theory that, while separate bonds were written, there was only one contract for each general contractor insofar as each bonding company was concerned. U. S. for Use and Benefit of Fine v. Travelers Indem. Co., D.C.Mo. 1963, 215 F.Supp. 455.

23. Evidence

Evidence in action on Capehart bonds disclosed that notice was in fact received by defendant surety. National State Bank of Newark v. Terminal Const. Corp., D.C.N.J.1963, 217 F.Supp. 341, affirmed 328 F.2d 315.

In action on bonds of Capehart prime contractor, evidence disclosed that welfare fund claims came within scope of notices received. Id.

In action against Capehart housing project prime contractor and surety on its payment bonds by bank which loaned money to subcontractor for payroll payments and took wage assignments from the workers, the evidence did not establish that bank was estopped from asserting wage claims covered by assignments in that bank represented to contractor that bank continued to make such loans, that bank knew that subcontractor continued to furnish prime contractor with certifications of weekly payroll payments, and that contractor would have cancelled subcontract if contractor had known of assignments. Id.

Evidence established that subcontractor which sued prime contractor and surety on bond given under this section, was obligated to do all grading, filling and excavation work on housing project including compaction of all subgrade for all structures, but that subcontractor was not required to do fine grading. Autrey v. Williams & Dunlap, D.C.La. 1962, 210 F.Supp. 491.

24. Interest

Subcontractor's project supplier could recover interest on past due invoices and reasonable attorney's fee, under Capehart bond authorizing recovery of sums justly due, where such interest and attorney fees were by contract between supplier and subcontractor made part of purchase price. D & L Const. Co. v. Triangle Elec. Supply Co., C.A.Mo.1964, 332 F.2d 1009.

A materialman in an action to recover under payment bond executed by a contractor in compliance with this subchapter, was entitled to interest from date the cause of action accrued and not from date of judgment. Allsop Lumber Co. v. Continental Cas. Co., 1963, 385 P.2d 625, 73 N.M. 64.

25. Reimbursement by sureties

When subcontractor's surety rejected prime contractor's demand that it take steps to remove liens which subcontractor's materialmen had filed against lease of property upon which Capehart housing was constructed, prime contractor had duty of taking reasonable steps to minimize damages which might result from recordation of liens; and since, under circumstances, prime contractor's expenditure for lien release bonds was reasonably calculated to minimize damages, prime contractor was entitled to reimbursement therefor by surety. Kesk, Inc. v. National Union Indem. Co., D.C.La. 1963, 224 F.Supp. 766.

Surety for electrical subcontractor on Capehart housing project would be required to reimburse general contractor for amounts paid to satisfy judgments in favor of subcontractor's materialmen. Id.

26. Review

Project supplier, who had prevailed in Capehart bond action in which it recovered interest and $6,000 attorney's fee pursuant to authority in contract between supplier and subcontractor, would not be allowed additional attorney's fee for services on appeal, where it appeared that sum allowed adequately covered all fees reasonably contemplated by original contract, and litigation had covered far wider field than could have reasonably been contemplated. D & L Const. Co. v.

Note 26

Triangle Elec. Supply Co., C.A.Mo.1964, 332 F.2d 1009.

Commissioners' condemnation award which was well within range of sharply conflicting evidence was conclusively binding on reviewing court. Buena Vista Homes, Inc. v. U. S., C.A.N.M.1960, 281 F. 2d 476.

Reviewing court could not reweigh evidence in de novo review or reverse judgment entered upon commissioners' award in condemnation proceeding merely because commission adopted value nearer that of government experts than that of appraisers for property owners. Id.

§ 1594a. Acquisition of military housing financed under Armed Services Housing Mortgage Insurance Fund and rental housing at military bases—Purchase price

(a) Whenever the Secretary of Defense or his designee deems it necessary for the purpose of this subchapter, he may acquire, by purchase, donation, condemnation, or other means of transfer, any land or (with the approval of the Federal Housing Commissioner) (1) any housing financed with mortgages insured under title VIII of the National Housing Act as in effect prior to the enactment of the Housing Amendments of 1955, or (2) any housing situated adjacent to a military installation which was (A) completed prior to July 1, 1952, (B) certified by the Department of Defense, prior to construction, as being necessary to meet an existing military family housing need and considered as military housing by the Federal Housing Commissioner, and (C) financed with mortgages insured under section 1713 of Title 12, or (3) any housing situated on or adjacent to a military installation which was (A) completed prior to July 1, 1952, (B) considered by the Department of Defense, prior to construction, as being necessary to meet an existing military family housing need and considered as military housing by the Federal Housing Commissioner, and (C) financed with mortgages insured under section 1743 of Title 12, including adjacent property constructed primarily to provide commercial facilities for the occupants of such housing. The purchase price of any such housing shall not exceed the Federal Housing Commissioner's estimate of the replacement cost of such housing and related property (not including the value of any improvements installed or constructed with appropriated funds) as of the date of final endorsement for mortgage insurance reduced by an appropriate allowance representing the estimated cost of repairs and replacements necessary to restore the property to sound physical condition, as determined by the Secretary of Defense or his designee upon the advice of the Commissioner: *Provided*, That in any case where the Secretary or his designee acquires a project held by the Commissioner, the price paid shall not exceed the face value of the debentures (plus accrued interest thereon) which the Commissioner issued in acquiring such project.

Housing at or near a military installation

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, the Secretary of Defense or his designee shall, in the manner provided in subsection (a) of this section, acquire by purchase, donation, or other means of transfer or, if the parties cannot agree upon terms for acquisition by such means, by condemnation, any housing described in clause (1) or (2) of subsection (a) of this section which is located at or near a military installation where the construction of housing under the Armed Services Housing Mortgage Insurance Program has been approved by the Secretary.

Condemnation; procedures; deposits; payment; interest

(c) (1) Condemnation proceedings instituted pursuant to this section shall be conducted in accordance with the provisions of section 257 of Title 40, or any other applicable Federal statute. Before any such condemnation proceedings are instituted, an effort shall be made to acquire the property involved by negotiation. In any such condemnation proceedings, and in the interests of expedition, the issue of just compensation may be determined by a commission of three qualified, disinterested persons to be appointed by the court. Any commission appointed hereunder shall give full consideration to all elements of value in accordance with existing law, and shall have the powers of a master provided in subdivision (c) of rule 53 of the Federal Rules of Civil Procedure and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of such rule. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice prescribed in paragraph (2) of subdivision (e) of such rule. Trial of all issues, other than just compensation, shall be by the court.

(2) In any condemnation proceedings instituted to acquire any such housing, or interest therein, the court shall not order the party in possession to surrender possession in advance of final judgment unless a declaration of taking has been filed, and a deposit of the amount estimated to be just compensation has been made, under section 258a of Title 40. The amount of such deposit for the purpose of this section shall not in any case be less than an amount equal to the actual cost of the housing (not including the value of any improvements installed or constructed with appropriated funds) as certified by the sponsor or owner of the project to the Federal Housing Commissioner pursuant to any statute or any regulation issued by the Federal Housing Commissioner, reduced by the amount of the principal obligation of the mortgage outstanding at the time possession is surrendered, but any such deposit shall not include any excess mortgage proceeds or "windfalls," kickbacks and rebates received in connection with the construction of said housing as determined by the Department of Defense, or any other

Federal agency. The amount of such deposit in any case where the sponsor or owner has not certified the cost of the project to the Federal Housing Commissioner at the time of the enactment of the Military Construction Act of 1959, shall be determined by the Secretary of Defense, or his designee, in accordance with sections 258a–258e of Title 40, with a view toward accurately estimating the equity of the sponsor or owner: *Provided*, That in the event there is withdrawn from the registry of the court by the owner or sponsor a sum of money in excess of the final award of just compensation, this excess shall be repaid to the United States plus a sum equal to 4 per centum per annum on such excess from the time such sum is desposited in the registry of the court: *Provided further*, That any court in which money is deposited as provided in this section shall require the furnishing of security by the owner to protect the United States from any loss by reason of a final award of just compensation of less than the amount deposited: *And provided further*, That the deposit required to be made by this section shall be without prejudice to any party in the determination of just compensation. Unless title is in dispute, the court, upon application and subject to the foregoing provisions of this subsection, shall promptly pay to the owner at least 75 per centum of the amount so deposited, but such payment shall be made without prejudice to any party to the proceeding. In the event that condemnation proceedings are instituted in accordance with procedures under sections 258a–258e of Title 40, the court shall order that the amount deposited shall be paid in a lump sum or over a period not exceeding five years in accordance with stipulations executed by the parties in the proceedings. In connection with condemnation proceedings which do not utilize the procedures under such sections, the Secretary or his designee, after final judgment of the court, may pay or agree to pay in a lump sum or, in accordance with stipulations executed by the parties to the proceedings, over a period not exceeding five years the difference between the outstanding principal obligation, plus accrued interest, and the price for the property fixed by the court. Unless such payment is made in a lump sum, the unpaid balance thereof shall bear interest at the rate of 4 per centum per annum.

Occupancy; use, or improvement of property before approval of title

(d) Property acquired under this section may be occupied, used, and improved for the purposes of this section prior to the approval of title by the Attorney General as required by section 255 of Title 40.

Release of accrual requirements for replacement, taxes, and hazard insurance reserves

(e) The Secretary or his designee may, in the case of any housing acquired or to be acquired under this section, make arrangements with the mortgagee whereby such mortgagee will agree to release

and waive all requirements of accruals for reserves for replacement, taxes, and hazard insurance provided for under the corporate charter and indenture agreement with respect to such housing, upon the execution of a written agreement by the Secretary or his designee that the purposes for which such reserves and other funds were accrued will be carried out.

Use as public quarters or lease of housing

(f) Any housing acquired under this section may be (1) assigned as public quarters to military personnel and their dependents; or (2) leased to military and civilian personnel for occupancy by them and their dependents, upon such terms and conditions as will in the judgment of the Secretary of Defense or his designee be in the best interest of the United States, without loss to military personnel of their basic allowance for quarters or appropriate allotments.

(g), (h) Repealed. Pub.L. 87–554, Title V, § 501(d), July 27, 1962, 76 Stat. 237.

Aug. 11, 1955, c. 783, Title IV, § 404, 69 Stat. 652; Aug. 3, 1956, c. 939, Title IV, § 420, 70 Stat. 1019; Aug. 7, 1956, c. 1029, Title V, § 512, 70 Stat. 1111; July 12, 1957, Pub.L. 85–104, Title V, § 504, 71 Stat. 303; Aug. 20, 1958, Pub.L. 85–685, Title V, § 513(d), 72 Stat. 663; Aug. 10, 1959, Pub.L. 86–149, Title IV, § 418, 73 Stat. 323; Sept. 23, 1959, Pub.L. 86–372, Title VII, §§ 702(a), (b), 703, 73 Stat. 683; July 27, 1962, Pub.L. 87–554, Title V, § 501(d), 76 Stat. 237; Sept. 2, 1964, Pub.L. 88–560, Title X, § 1003, 78 Stat. 806.

Historical Note

References in Text. Title VIII of the National Housing Act as in effect prior to the enactment of the Housing Amendments of 1955, referred to in subsec. (a), refers to Title VIII of Act June 27, 1934, c. 847, as in effect prior to Aug. 11, 1955, the date of enactment of Act Aug. 11, 1955, which is classified to sections 1748–1748g, and former sections 1748g—1 and 1748h of Title 12, Banks and Banking.

"At the time of the enactment of the Military Construction Act of 1959", referred to in subsec. (c) (2), means the time of the enactment of Pub.L. 86–149, which was approved on Aug. 10, 1959.

1964 Amendment. Subsec. (a). Pub.L. 88–560 authorized the acquisition of housing on or adjacent to a military installation completed prior to July 1, 1952, considered necessary to meet existing military family need, considered military housing by the Federal Housing Commissioner, and financed with mortgages insured under section 1743 of Title 12, including adjacent property constructed primarily to provide commercial facilities for the occupants of such housing.

1962 Amendment. Subsec. (f). Pub.L. 87–554 eliminated provision for deposit in the revolving fund of amounts equal to the quarters allowances or appropriate allotments of military personnel to whom housing is assigned as public quarters and rental charges for leasing of housing to military and civilian personnel.

Subsec. (g). Pub.L. 87–554 repealed subsec. (g) creating the revolving fund, enumerating uses of the fund and requiring the deposit in the fund of specified quarters allowances or allotments, rental charges and savings realized in operation of housing. See section 1594a—1(b) of this title.

Subsec. (h). Pub.L. 87–554 repealed subsec. (h) requiring the establishment of the revolving fund on the books of the Treasury Department, limiting appropriation authorization for revolving fund capital to $50,000,000 and permitting the transfer of certain funds to provide adequate capital for the fund.

1959 Amendments. Subsec (a). Pub.L. 86–372, § 702(a), authorized the acquisi-

tion of any housing situated adjacent to a military installation which was completed prior to July 1, 1952, certified by the Department of Defense, prior to construction, as being necessary to meet an existing military family housing need and considered as military housing by the Federal Housing Commissioner, and financed with mortgages insured under section 1713 of Title 12.

Subsec. (b). Pub.L. 86–372, § 702(b), substituted "any housing described in clause (1) or (2) of subsection (a) of this section" for "any housing constructed under the mortgage insurance provisions of sections 1748–1748h of Title 12 (as in effect prior to August 11, 1955)."

Subsec. (c) (2). Pub.L. 86–372, § 703, required the amount of the deposit in any case where the sponsor or owner has not certified the cost of the project to be determined with a view toward accurately estimating the equity of the sponsor or owner.

Subsec. (c) (2). Pub.L. 86–149 amended provisions generally to require the amount of the deposit to be not less than an amount equal to the actual cost of the housing as certified reduced by the amount of the principal obligation of the mortgage outstanding at the time possession is surrendered, to provide for determination of amount of deposit in cases where cost has not been certified, and to require payment of 4% interest where money has been withdrawn in excess of final award of just compensation.

1958 Amendment. Subsec. (c). Pub.L. 85–685 inserted provisions authorizing the issue of just compensation to be determined by a commission of three qualified, disinterested persons to be appointed by the court, prescribing its powers, relating to its action and report, and requiring trial of all issues, other than just compensation, to be by the court.

1957 Amendment. Subsec. (a). Pub.L. 85–104 substituted "representing the estimated cost of repairs and replacements necessary to restore the property to sound physical condition" for the words "for physical depreciation".

1956 Amendments. Act Aug. 7, 1956 designated existing provisions as subsecs. (a), (c), and (d), and added subsecs. (b), and (e)–(h).

Act Aug. 3, 1956 limited the purchase price of housing to the Commissioner's estimate of the replacement cost of such housing and related property as of the date of final endorsement for mortgage insurance reduced by an appropriate allowance for depreciation, and limited the price of any project held by the Commissioner to the face value of the debentures, plus accrued interest, which the Commissioner issued in acquiring the project.

Legislative History: For legislative history and purpose of Act Aug. 7, 1956, see 1956 U.S.Code Cong. and Adm.News, p. 4509. See, also, Pub.L. 85–104, 1957 U.S.Code Cong. and Adm.News, p. 1319; Pub.L. 86–372, 1959 U.S.Code Cong. and Adm.News, p. 2844; Pub.L. 88–560, 1964 U.S.Code Cong. and Adm.News.

Federal Rules of Civil Procedure

Condemnation of property, see rule 71A, 28 U.S.C.A.

Masters, see rule 53, 28 U.S.C.A.

Notes of Decisions

Library references

United States ⇐55.
C.J.S. United States §§ 71, 73.

1. Law governing

Condemnation being an essential governmental function and Congress not having chosen to make state law applicable

to definition of property interests condemned by the Government, the United States is not limited to condemnation in terms known to the state law, but rather may define such interests in terms of federal law. U. S. v. Certain Interests in Property in Champaign County, C.A.Ill. 1959, 271 F.2d 379, certiorari denied 80 S.Ct. 1058, 362 U.S. 974, 4 L.Ed.2d 1010.

2. Just compensation

No transferable value attached to low land rental for Wherry housing projects in determining value of profits which were condemned, where any person succeeding to sponsor's right under lease would have been subject to same control unit rents based in part upon low rentals charged for land. Likins-Foster Monterey Corp. v. U. S., C.A.Cal.1962, 308 F.2d 595.

Quoted word, in subsection (c) of this section requiring that estimated "just" compensation be deposited in order for declaration of taking to be effective, necessarily implied that Congress intended for court, in a litigated case, to determine whether sum deposited was adequate. U. S. v. Certain Interests in Property in Hillsborough County, Fla., D.C.Fla.1958, 161 F.Supp. 424.

3. —— Capitalization of income

Where prior to trial of proceeding to condemn leasehold interest in apartment developments constructed under Wherry Housing Act, funds contributed by lessees for necessary replacements, such as stoves and refrigerators, were withdrawn by them, Government's expert witness who determined value of interest by capitalization of net income properly deducted the replacement fund and an additional sum for repairs, not covered by fund, that he thought immediately necessary. U. S. v. Certain Interests in Property in Borough of Brooklyn, Kings County, State of N. Y., C.A.N.Y.1964, 326 F.2d 109.

In determining value of condemned property by capitalization of income method, items of extraordinary expense necessary to maintain level of income used as basis for capitalization but not accounted for as deductions in computation of anticipated annual earnings must be subtracted from appraiser's estimate of value. Id.

In action by United States to condemn defendants' leasehold interests, subject to outstanding mortgages, in a Wherry Act housing project, record disclosed that the use of the capitalization of income method to determine value by expert witnesses did not violate stipulation that comparable sales were not to be considered in determining value. U. S. v. Certain Interests in Property in Monterey County, Cal., D.C.Cal.1960, 186 F.Supp. 167, affirmed 308 F.2d 595.

4. —— Market value

The difficulty in determining market value of Wherry housing project leasehold interest which had never been sold and which could not be sold permitted utilization of other theories bearing upon value and, consequently, justified reception in condemnation case of some kinds of value which otherwise would not be proper. U. S. v. 190.71 Acres of Land in Lake County, Ill., C.A.Ill.1962, 300 F.2d 52.

Original cost of constructing Wherry housing project could be considered, in proceeding to condemn leasehold interest in such project, as a circumstance bearing on fair market value. Id.

Record failed to show that court abandoned standard of fair market value as measure of just compensation for taking of leasehold interest in Wherry housing project. Id.

5. Mortgage, assumption of

Implicit in contract whereby party was to service mortgage held by another on property constructed upon realty owned by United States was agreement that if obligation were assumed by public authority and need for servicing were no longer extant, contract would terminate. W. K. Ewing Co. v. New York State Teachers' Retirement System, 1961, 218 N.Y.S.2d 253, 14 A.D.2d 113.

Action of the United States, which owned fee of land on which mortgaged property was located, in acquiring property and assuming obligation of mortgage, was act of public intervention over which mortgagee had no control, and rendered impossible performance of contract whereunder third party was to service mortgage and therefore terminated contract. Id.

6. Purchase price

In the Housing Act of 1956 relating to acquisition by purchase or condemnation of housing for military personnel financed under armed services housing mortgage insurance fund and providing that the purchase price shall not exceed the formula price, even though the formula is followed the resulting price represents a maximum figure and neither party is bound to accept that figure. U. S. v. Certain Interests in Property in Cascade

County, Mont., D.C.Mont.1958, 163 F. Supp. 518.

7. Release of accrual requirements

Under this section authorizing Secretary of Defense to acquire title to housing property on government bases and authorizing Secretary to enter into agreement with mortgagee whereby mortgagee will release and waive all requirements of accruals for replacement, taxes and hazard insurance upon agreement by Secretary that purpose for reserves and other funds will be carried out, it is not mandatory upon mortgagee to execute agreement. W. K. Ewing Co. v. New York State Teachers' Retirement System, 1960, 197 N.Y.S.2d 364, 23 Misc.2d 812, appeal dismissed 210 N.Y.S.2d 991, 12 A.D. 2d 861, reversed on other grounds 218 N. Y.S.2d 253, 14 A.D.2d 113, affirmed 226 N. Y.S.2d 690, 11 N.Y.2d 749, 181 N.E.2d 628.

8. Taxes

Where United States leased its land in Michigan under long-term lease, and lessee erected armed services housing units thereon, and United States instituted proceeding to condemn leasehold and filed a deed of taking, the provisions in this section requiring court to pay owner at least 75% of amount deposited, without prejudice to any party to the proceeding, and giving court power to make such orders in respect to taxes as should be just and equitable, permitted court to withhold from distribution such an amount of money on deposit as would be substantially equal to amount of taxes claimed by county taxing authorities. U. S. v. Certain Interests in Property in Macomb County, Mich., D.C.Mich.1958, 178 F.Supp. 125.

9. Condemnation proceedings

Where the parties entered into bona fide negotiations respecting the acquisition by the United States under the Housing Act of 1956 of air force base housing financed under armed services housing mortgage insurance fund and negotiations terminated in disagreement and both parties agreed that action in condemnation would be necessary and neither party prior to the filing of such action some three and a half months later requested further negotiations pursuant to the 1957 amendment to the Act, there was no obligation on part of United States to institute such further negotiations prior to the action. U. S. v. Certain Interests in Property in Cascade County, Mont., D. C.Mont.1958, 163 F.Supp. 518.

10. Amendments

In proceeding by United States to condemn housing for military personnel financed under armed services housing mortgage insurance fund, the United States should obtain leave of court to make an amendment to its declaration of taking. U. S. v. Certain Interests in Property in Cascade County, Mont., D.C. Mont.1958, 163 F.Supp. 518.

In proceeding by United States to condemn air force base housing financed under armed services housing mortgage insurance fund, amendment substituting the sum of $75,000 for the sum of $1 designated in declaration of taking as the estimate of just compensation would not be struck, notwithstanding that amendment was filed without leave of court, where leave, if requested, would have been granted, and United States did not act in bad faith and no substantive right of defendant was affected by the amendment. Id.

11. Evidence—Admissibility

Testimony of one government witness that condemned leasehold interest in apartment developments constructed under Wherry Housing Act needed repairs and replacements totalling $450,000 was admissible. U. S. v. Certain Interests in Property in Borough of Brooklyn, Kings County, State of N.Y., C.A.N.Y.1964, 326 F.2d 109.

Federal Housing Administration's circular letter offered in proceeding to condemn leasehold interest in apartment developments constructed under Wherry Housing Act was not relevant evidence for purpose of reestablishing status of condemnees' witness as expert, where he had not relied on letter as basis for his estimate of rate of return on developments. Id.

Admission of evidence concerning sales of stock in Wherry Housing Act corporations and housing corporations created under section 1743 of Title 12 was not an abuse of discretion, in proceeding to condemn leasehold interest in apartment developments constructed under Wherry Housing Act, especially where Government used evidence of comparable sales not directly as proof of value but only to establish ratio between income and sale price as support for its estimate of appropriate rate of return. Id.

Exclusion of Federal Housing Administration's circular letter offered by owners of condemned leasehold interest in apartment developments constructed under Wherry Housing Act to buttress tes-

timony of their expert who sought to establish lower rate of return on property to procure higher value to be based on capitalization of income was not prejudicial, where court charged that 6.5% was legal maximum but jury accepted appraisal based on higher rate. Id.

Assumption made by Government witnesses that no value was attributable to ownership of condemned Wherry housing projects by virtue of four percent financing on Federal Housing Administration mortgage did not render witnesses' testimony as to value of projects incompetent. Likins-Foster Monterey Corp. v. U. S., C.A.Cal.1962, 308 F.2d 595.

Stipulation that there was continuing need for condemned Wherry housing projects units and additional military housing units at fort on which projects were located did not render inadmissible testimony of Government witnesses calculating future income over period of many years on basis of 97% occupancy, where jury was made aware that 3% vacancy assumption rested on judgment and experience rather than observation or other tangible evidence. Id.

Stipulation that there were no comparable sales that should be considered by jury in determining value of condemned Wherry housing projects and that there would be no proffer of any comparable sales in trial did not preclude Government witnesses from using comparable sales as aid, along with other data, in setting capitalization rate for property condemned. Id.

The refusal, in proceeding to condemn leasehold interest in Wherry housing project at Great Lakes Naval Training Center in city of North Chicago, Illinois, to admit evidence of sales, three to five years earlier, of capital stock in Wherry corporations whose projects were each located about a thousand miles from Chicago, was not error, where there was no proof of comparability. U. S. v. 190.71 Acres of Land in Lake County, Ill., C.A. Ill.1962, 300 F.2d 52.

Recognition by United States, in action to condemn leasehold on air force base, of reproduction cost less depreciation approach and its use by government witnesses, precluded government from asserting error regarding admission of reproduction cost evidence. U. S. v. Tampa Bay Garden Apartments, Inc., C.A.Fla. 1961, 294 F.2d 598.

In Wherry Housing Project condemnation case, there was no place for evidence as to rate of return on certain types of corporate securities and that condemnee's equity in housing project would be "a conservative investment." U. S. v. Leavell & Ponder, Inc., C.A.Tex.1961, 286 F.2d 398, certiorari denied 81 S.Ct. 1674, 366 U.S. 944, 6 L.Ed.2d 855.

Sales of other Wherry Housing Projects are proper for consideration in condemnation case involving such project. Id.

Opinions based on rate of return earned on sales prices of large apartment properties were proper for consideration in condemnation case involving Wherry Housing Project, with consideration given to fact that owners of Wherry Housing Project were not free to charge such rents as traffic might bear. Id.

Appraisers testifying as to value of leasehold interest in Wherry housing project on Air Force base being acquired by Government, could testify as to sales of corporate stock in other Wherry projects in other parts of country not as substantive proof of value but in support of election of capitalization rate. U. S. v. Certain Interests in Property in Cascade County, Mont., D.C.Mont.1962, 205 F.Supp. 745.

Defendant's expert who testified as to value of leasehold interest in Wherry housing project on Air Force base being acquired by Government could testify that they had considered reproduction costs less depreciation to check value but could not state their figures or computation. Id.

12. —— Weight and sufficiency

Evidence sustained jury finding as to rental value to which Government was entitled from date of its taking of leasehold interest in apartment developments constructed under Wherry Housing Act to date when Government was awarded possession. U. S. v. Certain Interests in Property in Borough of Brooklyn Kings County, State of N. Y., C.A.N.Y.1964, 326 F.2d 109.

Evidence established that corporation's equity value in leasehold interest in 400 units of Wherry housing project on Air Force Base was $545,414. U. S. v. Certain Interests in Property in Cascade County, Mont., D.C.Mont.1962, 205 F.Supp. 745.

13. —— Examination of witnesses

Condemnees which introduced no evidence concerning actual receipts and expenditures from date of taking by Government to date when Government was awarded possession of apartment developments constructed under Wherry Housing Act were not entitled to complain of hav-

ing been prevented from cross-examining Government's witness as to such information, where witness testifying in connection with rental value to which Government was entitled for that period had not used such information in reaching his estimate of rental value. U. S. v. Certain Interests in Property in Borough of Brooklyn, Kings County, State of N. Y., C.A.N.Y.1964, 326 F.2d 109.

Where Government developed on cross-examination that witness would advise a customer to pay designated amount for owner's leasehold interest in Wherry housing project and Government elicited answer that witness had customer who was willing to pay such amount, owner could inquire of witness as to who the purchaser was on redirect examination in proceeding to condemn such leasehold interest. U. S. v. 190.71 Acres of Land in Lake County, Ill., C.A.Ill.1962, 300 F.2d 52.

14. Questions for jury

Whether net return to sponsors of condemned Wherry housing projects would have continued to be controlled in future at same rate as in past or whether in future Federal Housing Agency controls would have been relaxed to point of permitting an increase in rents was question for jury in determining value of projects. Likins-Foster Monterey Corp. v. U. S., C.A.Cal.1962, 308 F.2d 595.

Value of condemnee's equity in condemned Wherry housing projects was jury question. Id.

15. Questions of fact

Comparability of property sold and that condemned is essentially question of fact and trial judges exercise broad discretion in ruling on admissibility of proof of comparable sales. U. S. v. Certain Interests in Property in Borough of Brooklyn, Kings County, State of N. Y., C.A.N.Y. 1964, 326 F.2d 109.

16. Instructions

Charge that it was undisputed that owners of leasehold interest in apartment developments constructed under Wherry Housing Act had received a windfall in that amount of mortgage was greater than actual cost of construction was not prejudicial, although defendants had not received windfall and whether they had was totally irrelevant to determination of value of leasehold, where Government's witness presented matter accurately and fairly and if condemnees had not insisted on emphasizing issue, there would have been no question of prejudice. U. S. v. Certain Interests in Property in Borough of Brooklyn, Kings County, State of N. Y., C.A.N.Y.1964, 326 F.2d 109.

Jury was properly instructed that governmental controls over rent existed with respect to condemned Wherry housing projects, where jury was also instructed that Government officials were compelled to be reasonable in establishing rents, charges and methods of operation to permit fair dollar return. Likins-Foster Monterey Corp. v. U. S., C.A.Cal.1962, 308 F.2d 595.

Court properly refused to instruct jury as to application of so-called Wunderlich Statute, sections 321, 322 of Title 41, pertaining to arbitrary, capricious or fraudulent decisions by Government officials, where no timely request for such instruction was made in proceeding to condemn Wherry housing projects and matter of giving instruction was discussed after all instructions had been given. Id.

Instruction, in proceeding to condemn leasehold interest in Wherry housing project, that evidence relating to value of other property and to location, kind, character and any other factor pertaining to similarity of other property to leasehold could be considered was properly refused in absence of proof of comparable sales. U. S. v. 190.71 Acres of Land in Lake County, Ill., C.A.Ill.1962, 300 F.2d 52.

Instruction, in proceeding to condemn leasehold interest in Wherry housing project, that original costs could be considered only for purpose of showing original processing for construction of project and rentals and maximum net income as controlled by documents executed between owner and United States was properly refused as having doubtful and uncertain meaning and as being useless inasmuch as amount of rent which owners could charge was set forth in F.H.A. rent schedules which were in evidence. Id.

17. Determination of award

Equipment replacement reserve fund was not deductible from award for taking of leasehold interest in Wherry housing project. U. S. v. 190.71 Acres of Land in Lake County, Ill., C.A.Ill.1962, 300 F.2d 52.

Low interest rate on mortgages on leasehold interest in Wherry housing project could be considered in determining amount of award for taking of leasehold interest. Id.

Evidence sustained defendants' contention that $100,500 deposited with declaration of taking was not just compensa-

tion for housing projects at air force base. U. S. v. Certain Interests in Property in Hillsborough County, Fla., D.C.Fla.1958, 161 F.Supp. 424.

18. Review

Government, on its appeal in condemnation case, cannot take advantage of erroneous instruction which Government proposed. U. S. v. 190.71 Acres of Land in Lake County, Ill., C.A.Ill.1962, 300 F.2d 52.

Court of Appeals' review of findings in Government condemnation action is only review of district court's determination, and commission's findings are considered only to see whether district court properly accepted and approved them as not being clearly erroneous. U. S. v. Tampa Bay Garden Apartments, Inc., C.A.Fla. 1961, 294 F.2d 598.

Court of Appeals in reviewing eminent domain proceeding would determine whether or not district court's independent supplemental findings were clearly erroneous and whether proper legal standards were applied in resolving issue of just compensation. Id.

§ 1594a—1. Department of Defense family housing management account—Establishment

(a) For the purpose of providing improved management and administration of funds appropriated or otherwise made available to the Department of Defense for family housing programs there is established on the books of the Treasury Department the Department of Defense family housing management account (hereinafter referred to as the "management account").

Single account administration; transfer and uses of funds

(b) The management account shall be administered by the Secretary of Defense as a single account. Into such account there shall be transferred (1) the unexpended balance of the funds established pursuant to subsections (g) and (h) of section 404 of the Housing Amendments of 1955, and (2) appropriations hereafter made to the Department of Defense, for the purpose of, or which are available for, the payment of costs arising in connection with the construction, acquisition, replacement, addition, expansion, extension, alteration, leasing, operation, or maintenance of family housing, including the cost of principal and interest charges, and insurance premiums, arising in connection with the acquisition of such housing, and mortgage insurance premiums payable under section 1715m(c) of Title 12.

Amount of obligations against account to defray family housing costs

(c) Obligations against the management account may be made by the Secretary of Defense, in such amounts as may be specified from time to time in appropriation Acts, for the purpose of defraying, in the manner and to the extent authorized by law, the costs referred to in subsection (b) of this section. Pub.L. 87–554, Title V, § 501(a)–(c), July 27, 1962, 76 Stat. 236.

Library references: United States ⇐29; C.J.S. United States §§ 34, 62.

Historical Note

References in Text. Subsecs. (g) and (h) of section 404 of the Housing Amendments of 1955, referred to in subsec. (b), were from Act Aug. 11, 1955, c. 783, Title IV, 69 Stat. 652, as amended Aug. 7, 1956, c. 1029, Title V, § 512, 70 Stat. 1111, and were repealed by section 501(d) of Pub.L. 87–554.

§ 1594b. Maintenance and operation of housing; use of quarters; payment of principal, interest, and other obligations

The Secretary of Defense or his designee is authorized to maintain and operate any housing acquired under this subchapter and assign quarters therein to military and civilian personnel and their dependents. Appropriations for quarters allowances or appropriate allotments, and rental charges to civilian personnel, may be utilized by the military department concerned for the payment of principal, interest, and other obligations, except those of maintenance and operation, of the mortgagor corporation with respect to such housing projects. Such payments shall not exceed an average of $90 a month per housing unit and total payments for all housing so acquired shall not exceed $21,000,000 per month: *Provided*, That, in case of the United States Coast Guard, total payments for all housing so acquired shall not exceed $90,000 per month. Aug. 11, 1955, c. 783, Title IV, § 405, 69 Stat. 652; Aug. 7, 1956, c. 1029, Title V, § 508, 70 Stat. 1110.

Library references: War and National Defense ⇐201 et seq.; C.J.S. War and National Defense § 133 et seq.

Historical Note

1956 Amendment. Act Aug. 7, 1956 substituted "$21,000,000" for "$9,000,000".

Cross References

Availability of appropriations to military departments for payment of cost of administration, supervision and inspection of family housing, see section 174h of Title 5, Executive Departments and Government Officers and Employees.

§ 1594c. Services of architects and engineers; use of appropriations; acquisition of sites

Whenever the Secretary of Defense or his designee determines that it is desirable in order to effectuate the purposes of this subchapter, the Secretary is authorized, without regard to the civil service and classification laws, to procure, by negotiation or otherwise, the services of architects and engineers, or organizations thereof, under such arrangements as he deems desirable, but at an expense not in excess of that permissible under the schedule of fees allowed from time to time by the Public Housing Administration in connection with projects assisted under the United States Housing Act of 1937, as amended. Such services may include the development of plans, drawings, and specifications for family housing under this subchapter and other services in connection therewith: *Provided*, That such plans, drawings, and specifications may include the use on any project to be constructed under this subchapter of alternate materials or alternate types of construction, including prefabrication, that provide substantially equal value and conform to standards established by

the Federal Housing Commissioner: *Provided further*, That such plans, drawings, and specifications, when developed pursuant to arrangements made under this section after August 7, 1956, shall follow the principle of modular measure, in order that the housing may be built by conventional construction, on-site fabrication, factory precutting, factory fabrication, or any combination of these construction methods: *Provided further*, That the Secretary may designate certain sites or parts thereof for family housing to be furnished from prefabricated houses or housing components. Such arrangements may include provision for advance or progress payments, for payment by third parties, for payment by the Government of any such compensation as is not paid for by third parties, and shall include provision for reimbursement by third parties to the Government of any compensation or other expenses paid by the Government pursuant to this section, and may include other provisions for compensation. Any public works appropriations now or hereafter available to the Departments of the Army, Navy, or Air Force or the Coast Guard may be obligated by the respective departments or the Coast Guard for these purposes. Reimbursements to the Government on account of payments made pursuant to this section shall be made to appropriations against which such payments were charged. The Secretary is further authorized to advance or pay to the Federal Housing Administration its "Appraisal and Eligibility Statement" fees in connection with such family housing. The Secretary is further authorized to enter into arrangements by contract or otherwise for eventual acquisition by the Government, without cost to the Government of all right, title, and interest in sites on which housing is constructed pursuant to this subchapter and improvements thereon. Aug. 11, 1955, c. 783, Title IV, § 406, 69 Stat. 653; Aug. 7, 1956, c. 1029, Title V, § 509, 70 Stat. 1110.

Historical Note

References in Text. The civil-service laws, referred to in the text, are classified generally to Title 5, Executive Departments and Government Officers and Employees.

The classification laws, referred to in the text, probably has reference to the Classification Act of 1949, which is classified to chapter 21 of Title 5.

The United States Housing Act of 1937, as amended, referred to in the text, is classified to chapter 8 of this title.

1956 Amendment. Act Aug. 7, 1956 inserted second proviso requiring plans, drawings, and specifications to follow the principle of modular measure, so the housing may be built by conventional construction, on-site fabrication, factory precutting, factory fabrication, or any combination of these construction methods.

§ 1594d. Appropriations; use of quarters allowances

(a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 1594, 1594a, 1594b, and 1594c of this title.

(b) Any funds heretofore or hereafter authorized to be expended by any of the military departments or the Coast Guard for the pay-

ment of allowances for quarters for military personnel may be used for the purposes specified in subsection (a) of this section. Aug. 11, 1955, c. 783, Title IV, § 407, 69 Stat. 653.

Library references: United States ⇐85; C.J.S. United States § 123.

§ 1594e. Definitions

(a) Wherever the terms "Secretary of Defense" or "Secretary" or "Secretary of the Army, Navy, or Air Force" appear in this subchapter or in title VIII of the National Housing Act, as amended, by the Housing Amendments of 1955, they shall be deemed to mean the Secretary of the Treasury in the case of the application of the provisions of this subchapter or of title VIII of the National Housing Act, as amended by the Housing Amendments of 1955, for the benefit of the United States Coast Guard.

(b) Wherever the term "armed services" appears in this subchapter it shall be deemed to include the United States Coast Guard. Aug. 11, 1955, c. 783, Title IV, § 409, 69 Stat. 654.

Historical Note

References in Text. Title VIII of the National Housing Act, as amended, by the Housing Amendments of 1955, and title VIII of the National Housing Act, as amended by the Housing Amendments of 1955, referred to in subsec. (a), refer to title VIII of Act June 27, 1934, c. 847, as amended by Act Aug. 11, 1955, which is classified to sections 1748–1748g of Title 12, Banks and Banking.

§ 1594f. Net floor area limitations

In the construction of housing under the authority of this subchapter and sections 1748–1748g and 1748h—1 to 1748h—3 of Title 12, the maximum limitations on net floor area for each unit shall be the same as the net floor area limitations prescribed by law (at the time plans and specifications for such construction are begun) for public quarters built with appropriated funds under military construction authority. Aug. 11, 1955, c. 783, Title IV, § 410, as added Aug. 7, 1956, c. 1029, Title V, § 510, 70 Stat. 1110, and amended July 12, 1957, Pub.L. 85–104, Title V, § 503, 71 Stat. 303.

Historical Note

1957 Amendment. Pub.L. 85–104 substituted "limitations prescribed by law (at the time plans and specifications for such construction are begun) for public quarters built with appropriated funds under military construction authority" for the words "permanent limitations prescribed in the second, third, and fourth provisos of section 3 of the Act of June 12, 1948, (62 Stat. 375), or in section 3 of the Act of June 16, 1948 (62 Stat. 459), other than the first, second, and third provisos thereof".

Legislative History: For legislative history and purpose of Pub.L. 85–104, see 1957 U.S.Code Cong. and Adm.News, p. 1319.

§ 1594g. Repealed. Pub.L. 85–241, Title IV, § 406(b), Aug. 30, 1957, 71 Stat. 556, eff. July 1, 1958

Historical Note

Section, Act Aug. 3, 1956, c. 939, Title IV, § 419, 70 Stat. 1018, prescribed certain conditions to be complied with before the United States could enter into any contract for the construction or acquisition of family housing units by or for the use of military civilian personnel of any of the military services.

§ 1594h. Purchase of family housing for assignment as public quarters; space and cost limitations

The Secretary of the Army is authorized to purchase out of appropriations available for military construction family housing including necessary land at, or near, military tactical installations for assignment as public quarters to military personnel and their dependents. Not more than 300 units of such housing may be purchased under this section. Space limitations per unit will be in accordance with subsections (a), (b), and (c) of section 4774 of Title 10, and cost limitations as now or hereafter established for military housing constructed with appropriated funds. Pub.L. 85–241, Title I, § 103, Aug. 30, 1957, 71 Stat. 534.

Library references: War and National Defense ⇐201 et seq.; C.J.S. War and National Defense § 133 et seq.

§ 1594h—1. Improvement of family housing units; public quarters designation; cost limitations

(a) The Secretary of Defense, or his designee, is authorized to accomplish alterations, additions, expansions, or extensions not otherwise authorized by law of family housing units at various locations under the jurisdiction of the Department of Defense which, on July 27, 1962, have not been designated as public quarters. Units so improved shall be designated public quarters.

(b) No family housing unit may be improved at a total cost of more than 50 per centum of the maximum cost of construction prescribed by this Act for an equivalent unit of new family housing. Pub.L. 87–554, Title V, § 503, July 27, 1962, 76 Stat. 239.

Historical Note

References in Text. This Act, referred to in subsec. (b), refers to Pub.L. 87–554. Construction cost limitations are set out in note under this section.

Construction Cost Limitations. Section 502 of Pub.L. 88–174, Title V, Nov. 7, 1963, 77 Stat. 325, provided that:

"Authorizations for the construction of family housing provided in this Act shall be subject to the following limitations on cost, which shall include shades, screens, ranges, refrigerators, and all other installed equipment and fixtures:

"(a) The cost per unit of family housing constructed in the United States (other than Alaska), the Canal Zone, and Puerto Rico shall not exceed—

"$22,000 for generals or equivalent;

"$19,800 for colonels or equivalent;

"$17,600 for majors and/or lieutenant colonels or equivalent;

"$15,400 for all other commissioned or warrant officer personnel or equivalent;

"$13,200 for enlisted personnel;

"(b) When family housing units are constructed in areas other than those listed in subsection (a), the average cost of all such units, in any project of 50 units or more, shall not exceed $32,000, and in no event shall the cost of any unit exceed $40,000.

"(c) The cost limitations provided in subsections (a) and (b) shall be applied to the five-foot line.

"(d) No project in excess of 50 units in the areas listed in subsection (a) shall be constructed at an average unit cost exceeding $17,500, including the cost of the family unit and the proportionate costs of land acquisition, site preparation, and installation of utilities.

"(e) No family housing unit in the areas listed in subsection (a) shall be constructed at a total cost exceeding $26,000, including the cost of the family unit and the proportionate costs of land acquisition, site preparation, and installation of utilities."

Similar provisions were contained in Pub.L. 87–554, Title V, § 506, July 27, 1962, 76 Stat. 239.

§ 1594i. Authorization of number of family housing units

Notwithstanding the provisions of any other law, and effective July 1, 1958, no family housing units shall be contracted for or acquired at or in support of military installations or activities, and no certificates with respect to any family housing units shall be issued by the Secretary of Defense or his designee or by any of the military departments in connection with section 1748h—2 of Title 12, unless the actual number of units involved has been specifically authorized by an annual military construction authorization Act except (1) housing units acquired pursuant to the provisions of section 1594a of this title; (2) rental guarantee family housing authorized under section 302 of the Act of July 14, 1952 (66 Stat. 606, 622): *Provided*, That not more than five thousand units shall be contracted for under the authority of such section prior to June 30, 1964; and (3) housing units leased for terms of one year, whether renewable or not, or for terms of not more than five years pursuant to the provisions of section 2675 of Title 10. Pub.L. 85–241, Title IV, § 406(a), Aug. 30, 1957, 71 Stat. 556; Pub.L. 85–685, Title V, § 512, Aug. 20, 1958, 72 Stat. 662; Pub.L. 86–149, Title IV, § 408, Aug. 10, 1959, 73 Stat. 321; Pub.L. 86–500, Title V, § 507(b), June 8, 1960, 74 Stat. 185; Pub.L. 87–70, Title VI, § 611(b), June 30, 1961, 75 Stat. 180; Pub.L. 88–174, Title V, § 510, Nov. 7, 1963, 77 Stat. 327.

Historical Note

References in Text. Section 302 of the Act of July 14, 1952, referred to in the text, is section 302 of Act July 14, 1952, c. 726, Title III, 66 Stat. 622, which is not classified to the Code.

1963 Amendment. Pub.L. 88–174 inserted the prohibition against issuance of certificates with respect to any family housing units in connection with section 1748h—2 of Title 12.

1961 Amendment. Pub.L. 87–70 eliminated provisions which related to certificates issued by the Secretary of Defense under section 1748h—2 of Title 12.

1960 Amendment. Pub.L. 86–500 prohibited the issuance of certificates with respect to family housing units unless the actual number of units involved has been specifically authorized.

1959 Amendment. Pub.L. 86–149 excepted rental guarantee family housing.

1958 Amendment. Pub.L. 85–685 excepted housing units leased, utilizing available operation and maintenance ap-

propriations, for terms of one year, whether renewable or not, or for terms of not more than five years pursuant to the provisions of section 171z—3 of Title 5.

Legislative History: For legislative history and purpose of Pub.L. 86-500, see 1960 U.S.Code Cong. and Adm.News, p. 2245. See, also, Pub.L. 87-70, 1961 U.S. Code Cong. and Adm.News, p. 1923.

§ 1594j. Inadequate quarters—Occupancy on rental basis without loss of basic allowance for quarters

(a) Notwithstanding the provisions of any other law, members of the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, with dependents, may occupy on a rental basis, without loss of basic allowance for quarters, inadequate quarters under the jurisdiction of any of the uniformed services, notwithstanding that such quarters may have been constructed or converted for assignment as public quarters. The net difference between the basic allowance for quarters and the fair rental value of such quarters shall be paid from otherwise available appropriations.

Administration

(b) The provisions of this section shall be administered under regulations approved by the President.

Designation as rental housing

(c) The Secretaries of the Army, Navy, and Air Force for the respective military departments, the Secretary of the Treasury for the Coast Guard when the Coast Guard is operating as a service in the Treasury Department, the Secretary of Commerce for the Coast and Geodetic Survey, and the Secretary of Health, Education, and Welfare for the Public Health Service (hereafter referred to as the "Secretaries"), are each authorized, subject to standards established pursuant to subsection (b) of this section, to designate as rental housing such housing as he may determine to be inadequate as public quarters.

Leasing of housing units

(d) The Secretaries are each further authorized, subject to standards established pursuant to subsection (b) of this section, to lease inadequate housing to personnel of any of the mentioned services for occupancy by them and their dependents. The housing facilities leased, as herein provided, shall not be required to have been constructed with funds derived from appropriations specifically made for the purpose of the construction of rental housing for personnel of the services mentioned.

Alteration, improvement, or disposition of housing units

(e) All housing units determined pursuant to subsection (c) of this section to be inadequate shall, prior to July 1, 1962, either be altered or improved so as to qualify as public quarters, or be demolished or otherwise disposed of.

Housing financed with mortgages insured under Title VIII of the National Housing Act

(f) This section shall have no application to any housing described in clause (1) or (2) of section 1594a(a) of this title.

Continual surveillance and periodic surveys of quarters; exemption of quarters

(g) The Secretaries of Defense and Health, Education, and Welfare, in order to insure as far as possible that family housing under their jurisdiction is adequate as public quarters and fully utilized, shall maintain such continual surveillance and conduct such periodic surveys of such quarters as they shall deem necessary for this purpose. Where either Secretary or his designee determines, on the basis of such surveys, that it is not in the best interest of the United States to improve, demolish, or otherwise dispose of any quarters which have been determined inadequate under this section, he may exempt such quarters from the requirements of subsection (e) of this section: *Provided*, That any quarters so exempted must be improved, demolished, or otherwise disposed of not later than July 1, 1965: *And provided further*, That the Secretary of Defense, or his designee, may exempt from this requirement any housing at any particular installation as to which he determines that (1) the housing is safe, decent, and sanitary, so as to be suitable for occupancy; (2) the housing cannot be made adequate as public quarters with a reasonable expenditure of funds; (3) the rentals charged to, or the allowances forfeited by, the occupants are not less than the costs of maintaining and operating the housing; and (4) there is a continuing need which cannot appropriately be met by privately owned housing in the area. Pub.L. 85–241, Title IV, § 407, Aug. 30, 1957, 71 Stat. 556; Pub.L. 85–685, Title V, § 516, Aug. 20, 1958, 72 Stat. 664; Pub.L. 86–372, Title VII, § 702(c), Sept. 23, 1959, 73 Stat. 683; Pub.L. 86–500, Title V, § 508, June 8, 1960, 74 Stat. 186; Pub.L. 87–57, Title VI, § 610, June 27, 1961, 75 Stat. 111; Pub.L. 88–174, Title V, § 506, Nov. 7, 1963, 77 Stat. 326.

Historical Note

1963 Amendment. Subsec. (g). Pub.L. 88–174 added proviso containing standards for exemption of quarters.

1961 Amendment. Subsec. (e). Pub.L. 87–57 substituted "July 1, 1962" for "July 1, 1961."

Subsec. (g). Pub.L. 87–57 substituted "July 1, 1965" for "July 1, 1962."

1960 Amendment. Subsec. (g). Pub.L. 86–500 added subsec. (g).

1959 Amendment. Subsec. (f). Pub.L. 86–372 substituted "housing described in clause (1) or (2) of section 1594a(a) of this title" for "housing financed with mortgages insured under the provisions of Title VIII of the National Housing Act as in effect prior to the enactment of the Housing Amendments of 1955."

1958 Amendment. Subsec. (e). Pub.L. 85–685 substituted "July 1, 1961" for "July 1, 1960".

Legislative History: For legislative history and purpose of Pub.L. 86–372, see 1959 U.S.Code Cong. and Adm.News, p. 2844. See, also, Pub.L. 86–500, 1960 U.S.Code Cong. and Adm.News, p. 2245.

EXECUTIVE ORDER NO. 10766
May 2, 1958, 23 F.R. 2981

DELEGATION OF AUTHORITY TO APPROVE REGULATIONS

Section 1. The Director of the Bureau of the Budget is hereby authorized and empowered, without the approval, ratification, or other action of the President, to exercise the authority vested in the President by section 407(b) of the act of August 30, 1957, 71 Stat. 556 (42 U.S. C.A. 1594j(b)) [subsec. (b) of this section], to approve regulations prescribed pursuant to that section, relating to the rental of substandard housing for members of the uniformed services. Any such regulations may, with the approval of the Director, be made effective on any date occurring between December 31, 1957, and the date on which section 407(b) [subsec. (b) of this section] ceases to be in force.

Sec. 2. The authority delegated to the Director of the Bureau of the Budget by section 1 of this order shall be deemed to include the authority to approve the amendment, supersedure, or termination of regulations at any time approved by the President under section 407(b) [subsec. (b) of this section].

Sec. 3. The Secretaries referred to in section 407(c) of the said act [subsec. (c) of this section] shall furnish the Director of the Bureau of the Budget such reports with respect to matters within the scope of the said regulations as he may require and at such times as he may specify.

Dwight D. Eisenhower

§ 1594k. Foreign countries; guarantee of rental return to builders; limitation on amount; period; unit limitation

For the purpose of providing military family housing in foreign countries, the Secretary of Defense is authorized to enter into agreements guaranteeing the builders of such housing a rental return equivalent to a specified portion of the annual rental income which the builders would receive from the tenants if the housing were fully occupied: *Provided*, That the aggregate amount guaranteed under such agreements entered into during the fiscal years 1964 and 1965 shall not exceed such amount as may be applicable to five thousand units: *Provided further*, That no such agreement shall guarantee the payment of more than 97 per centum of the anticipated rentals, nor shall any guarantee extend for a period of more than ten years, nor shall the average guaranteed rental on any project exceed $150 per unit per month including the cost of maintenance and operation. Pub.L. 88–174, Title V, § 507, Nov. 7, 1963, 77 Stat. 326.

CHAPTER 10.—FEDERAL SECURITY AGENCY

§§ 1601—1603. Transferred and Omitted

Historical Note

Codification. Sections 1601, 1602 have been transferred to sections 623d and 623e, respectively, of Title 5, Executive Departments and Government Officers and Employees.

Section 1603, Acts July 12, 1943, c. 221, Title II, § 1, 57 Stat. 513; June 28, 1944, c. 302, Title II, § 1, 58 Stat. 566; July 3, 1945, c. 263, Title II, 59 Stat. 376; July 26, 1946, c. 672, Title II, § 201, 60 Stat. 697; July 8, 1947, c. 210, Title II, § 201, 61 Stat. 276, which authorized the Secretary of the Treasury to transfer to constituent organizations of the Federal Security Agency requested amounts from appropriations for traveling expenses and printing and binding, Federal Security Agency, and to retransfer to such appropriations, was not repeated in subsequent acts, and expired with the appropriation acts of which it was a part.

CHAPTER 11.—COMPENSATION FOR DISABILITY OR DEATH TO PERSONS EMPLOYED AT MILITARY, AIR, AND NAVAL BASES OUTSIDE THE UNITED STATES

Sec.

§ 1651. Compensation authorized—Places of employment

(a) Except as herein modified, the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended, shall apply in respect to the injury or death of any employee engaged in any employment—

(1) at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government; or

(2) upon any lands occupied or used by the United States for military or naval purposes in any Territory or possession

outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone); or

(3) upon any public work in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone), if such employee is engaged in employment at such place under the contract of a contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) with the United States; but nothing in this paragraph shall be construed to apply to any employee of such a contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(4) under a contract entered into with the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1)–(3) of this subdivision, for the purpose of engaging in public work, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (1) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in such public work under such contract the payment of compensation and other benefits under the provisions of this chapter, and (2) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(5) under a contract approved and financed by the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States, under the Mutual Security Act of 1954, as amended (other than title II of chapter II thereof unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States, determines a contract financed under a successor provision of any successor Act should be covered by this section), and not otherwise within the coverage of this sec-

tion, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (A) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in work under such contract the payment of compensation and other benefits under the provisions of this chapter, and (B) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(6) outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense;

irrespective of the place where the injury or death occurs, and shall include any injury or death occurring to any such employee during transportation to or from his place of employment, where the employer or the United States provides the transportation or the cost thereof.

Definitions

(b) As used in this section—

(1) the term "public work" means any fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including but not limited to projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project;

(2) the term "allies" means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance;

(3) the term "war activities" includes activities directly relating to military operations;

(4) the term "continental United States" means the States and the District of Columbia.

Liability as exclusive

(c) The liability of an employer, contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such

contractor) under this chapter shall be exclusive and in place of all other liability of such employer, contractor, subcontractor, or subordinate contractor to his employees (and their dependents) coming within the purview of this chapter, under the workmen's compensation law of any State, Territory, or other jurisdiction, irrespective of the place where the contract of hire of any such employee may have been made or entered into.

Definition of contractor

(d) As used in this section, the term "contractor" means any individual, partnership, corporation, or association, and includes any trustee, receiver, assignee, successor, or personal representative thereof, and the rights, obligations, liability, and duties of the employer under such Longshoremen's and Harbor Workers' Compensation Act shall be applicable to such contractor.

Contracts within section; waiver of application of section

(e) The liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in public work under subparagraphs (3) and (4), subdivision (a) of this section, and the conditions set forth therein, shall become applicable to contracts and subcontracts heretofore entered into but not completed at the time of the approval of this chapter, and the liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in performance of contracts, subcontracts, or subordinate contracts specified in subparagraph (5), subdivision (a) of this section, and the conditions set forth therein, shall hereafter be applicable to the remaining terms of such contracts, subcontracts, and subordinate contracts entered into prior to but not completed on the date of enactment of any successor Act to the Mutual Security Act of 1954, as amended, and contracting officers of the United States are authorized to make such modifications and amendments of existing contracts as may be necessary to bring such contracts into conformity with the provisions of this chapter. No right shall arise in any employee or his dependent under subparagraphs (3) and (4) of subdivision (a) of this section, prior to two months after the approval of this chapter. Upon the recommendation of the head of any department or other agency of the United States, the Secretary of Labor, in the exercise of his discretion, may waive the application of this section with respect to any contract, subcontract, or subordinate contract, work location under such contracts, or classification of employees. Upon recommendation of any employer referred to in paragraph (6) of subsection (a) of this section, the Secretary of Labor may waive the application of this section to any employee or class of employees of such employer, or to any place of employment of such an employee or class of employees.

Liability to prisoners of war and protected persons

(f) The liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in public work under paragraphs (1), (2), (3), and (4) of subsection (a) of this section or in any work under paragraph (5) of subsection (a) of this section does not apply with respect to any person who is a prisoner of war or a protected person under the Geneva Conventions of 1949 and who is detained or utilized by the United States. Aug. 16, 1941, c. 357, § 1, 55 Stat. 622; Dec. 2, 1942, c. 668, Title III, § 301, 56 Stat. 1035; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7871, 60 Stat. 1352; 1946 Reorg.Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg.Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; June 30, 1953, c. 176, § 4, 67 Stat. 135; June 30, 1958, Pub. L. 85–477, ch. V, § 502(a), 72 Stat. 272; Aug. 8, 1958, Pub.L. 85–608, Title II, § 201, 72 Stat. 537; June 25, 1959, Pub.L. 86–70, § 40, 73 Stat. 150; July 24, 1959, Pub.L. 86–108, ch. VII, § 701(a), 73 Stat. 257; Sept. 4, 1961, Pub.L. 87–195, Pt. IV, § 701, 75 Stat. 463.

Historical Note

References in Text. The Longshoremen's and Harbor Workers' Compensation Act, referred to in subsecs. (a) and (d), is classified to chapter 18 of Title 33, Navigation and Navigable Waters.

The Mutual Security Act of 1954, as amended, referred to in subsecs. (a) (5) and (e), was classified to chapter 24 of Title 22, Foreign Relations and Intercourse, and was repealed, with certain exceptions, by section 642(a) of Pub.L. 87–195. Parts I to III of Pub.L. 87–195 also enacted the International Development, Peace and Security Program, effective September 4, 1961, which is classified to chapter 32 of Title 22.

Codification. Reference to the Philippine Islands in paragraphs (2) and (3) of subsec. (a) was omitted as obsolete in view of the independence proclaimed by the President of the United States by Proc. No. 2695, which is set out as a note under section 1394 of Title 22, Foreign Relations.

1961 Amendment. Subsec. (a) (5). Pub. L. 87–195, § 701(1), extended coverage in those cases where the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States, determines a contract financed under a successor provision of any successor Act to the Mutual Security Act of 1954 should be covered by this section.

Subsec. (e). Pub.L. 87–195, § 701(2), substituted "but not completed on the date of enactment of any successor Act to the Mutual Security Act of 1954, as amended" for "June 30, 1958, but not completed on July 24, 1959."

1959 Amendment. Subsec. (a) (2). Pub. L. 86–70, § 40(a) eliminated "Alaska;" preceding "the United States Naval Operating Base."

Subsec. (a) (3). Pub.L. 86–70, § 40(a) eliminated "Alaska;" preceding "the United States Naval Operating Base."

Subsec. (a) (6). Pub.L. 86–70, § 40(b) eliminated words "or in Alaska or the Canal Zone" following "continental United States."

Subsec. (b) (4). Pub.L. 86–70, § 40(c), added subsec. (b) (4).

Subsec. (e). Pub.L. 86–108 provided that the liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in performance of contracts, subcontracts, or subordinate contracts specified in subsec. (a) (5) of this section, and the conditions set forth therein, shall be applicable to the remaining terms of such contracts, subcontracts, and subordinate contracts entered into prior to June 30, 1958, but not completed on July 24, 1959.

1958 Amendments. Subsec. (a) (5). Pub.L. 85–477, § 502(a) (1), added subsec. (a) (5).

Subsec. (a) (6). Pub.L. 85–608, § 201(a), added subsec. (a) (6).

Subsec. (b). Pub.L. 85–608, § 201(b), inserted "whether or not fixed," following

"any project" and substituted "projects or operations under service contracts and projects in connection with the national defense or with war activities" for "projects in connection with the war effort" in the definition of "public work", and added the definitions of "allies" and "war activities".

Subsec. (e). Pub.L. 85–608, § 201(c), substituted "may waive the application of this section with respect to any contract" for "may waive the application of the provisions of subparagraph (3) or (4) of subdivision (a) of this section, with respect to any contract", and inserted provisions authorizing the Secretary to waive the application of this section to any employee or class of employees of an employer referred to in paragraph (6) of subsection (a) of this section upon recommendation of the employer.

Subsec. (e). Pub.L. 85–477, § 502(a) (2), substituted "provisions of subparagraphs (3), (4), or (5)" for "provisions of subparagraphs (3) or (4)".

Subsec. (f). Pub.L. 85–608, § 201(d), substituted provisions making liability of a contractor, sub-contractor, or subordinate contractor inapplicable with respect to persons who are prisoners of war or protected persons and who are detained or utilized by the United States for provisions which made liability inapplicable with respect to employees not citizens of the United States who incurred an injury or death resulting in death subsequent to June 30, 1953.

Subsec. (f). Pub.L. 85–477, § 502(a) (3), inserted "or in any work under subparagraph (5) of subsection (a) of this section" preceding "shall not apply".

1953 Amendment. Subsec. (f). Act June 30, 1953 added subsec. (f).

1942 Amendment. Act Dec. 2, 1942, amended section generally. Said section formerly read as follows:

"Except as herein modified, the provisions of sections 901–921, 922–950 of Title 33, as amended, and as the same may be amended hereafter, shall apply in respect to the injury or death of any employee engaged in any employment at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government or any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States, including Alaska, Guantanamo, and the Philippine Islands, but excluding the Canal Zone, irrespective of the place where the injury or death occurs."

Effective Date of 1959 Amendment. Section 47(g) of Pub.L. 86–70 provided that: "The amendments in sections 40 and 42 [to this section and sections 1701, 1704 and 1711 of this title] shall take effect when enacted [June 25, 1959]; *Provided, however*, That with respect to injuries or deaths occurring on or after January 3, 1959, and prior to the effective date of these amendments, claims filed by employees engaged in the State of Alaska in any of the employments covered by the Defense Base Act [this chapter] (and their dependents) may be adjudicated under the Workmen's Compensation Act of Alaska instead of the Defense Base Act."

Effective Date of 1958 Amendment. Section 402 of Pub.L. 85–608, provided that: "The effective date of this Act [amending this section and sections 1701, 1702, 1704, 1711 and 1716 of this title, and sections 751 and 790 of Title 5, Executive Departments and Government Officers and Employees, repealing section 801 of Title 5, and enacting notes set out under this section and section 1701 of this title] is June 30, 1958. Persons are entitled to the benefits of this Act notwithstanding the fact that an injury, disability, or death occurred after June 30, 1958, and before the date of enactment of this Act [August 8, 1958]."

Short Title. Section 5 of Act Aug. 16, 1941, as added by Pub.L. 85–608, § 202, provided that Act Aug. 16, 1941, which is classified to this chapter, should be popularly known as the "Defense Base Act".

Repeals. Section 701 of Pub.L. 87–195, which amended this section was repealed by section 401 of Pub.L. 87–565, Pt. IV, Aug. 1, 1962, 76 Stat. 263, except in so far as section 701 affected this section.

Transfer of Functions. In text of subsec. (e), "Secretary of Labor" was substituted for "Federal Security Administrator" by 1950 Reorg.Plan No. 19, set out as a note under section 778 of Title 5, Executive Departments and Government Officers and Employees.

United States Employees' Compensation Commission, formerly referred to in subsec. (e), was abolished and its functions transferred to the Federal Security Administrator by 1946 Reorg.Plan No. 2, set out as a note under section 133y—16 of Title 5.

Air Force. For transfer of certain functions insofar as they pertain to the Air Force, and to the extent that they

Note 1

were not previously transferred to the Secretary of the Air Force and Department of the Air Force from the Secretary of the Army and Department of the Army, see Secretary of Defense Transfer Order No. 40 [App. A (74)], July 22, 1949.

Legislative History: For legislative history and purpose of Act June 30, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 1783. See, also, Pub.L. 85-477, 1958 U.S. Code Cong. and Adm.News, p. 2755; Pub. L. 85-608, 1958 U.S.Code Cong. and Adm. News, p. 3321; Pub.L. 86-70, 1959 U.S. Code Cong. and Adm.News, p. 1675; Pub. L. 86-108, 1959 U.S.Code Cong. and Adm. News, p. 1817; Pub.L. 87-195, 1961 U.S. Code Cong. and Adm.News, p. 2472.

Cross References

"Allies" and "war activities" as used in subsec. (b) defined, see section 1711(d) and (e) of this title.

Compensation for injury, death, or detention of employees of contractors with United States outside of the United States, see chapter 12 of this title.

Notes of Decisions

Library references

Workmen's Compensation ⟸163.
C.J.S. Workmen's Compensation § 36.

1. Purpose

This chapter, by extending to workers on defense base project the benefits of Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, intended to adapt the existing law to needs of employees in defense work. Turnbull v. Cyr, C.A.Cal.1951, 188 F.2d 455.

This chapter is remedial and should be interpreted to accomplish, so far as is possible, the purposes for which it was intended. Republic Aviation Corp. v. Lowe, C.C.A.N.Y.1947, 164 F.2d 18, certiorari denied 68 S.Ct. 663, 333 U.S. 845, 92 L.Ed. 1128.

The history of this chapter clearly shows intention to extend Longshoremen's Compensation Act, section 901 et seq. of Title 33, to defense bases without regard to local compensation laws. Royal Indemnity Co. v. Puerto Rico Cement Corporation, C.C.A.Puerto Rico 1944, 142 F.2d 237, certiorari denied 65 S.Ct. 89, 323 U.S. 756, 89 L.Ed. 605.

Provision of this section requiring contractor to obtain workmen's compensation insurance coverage in accordance with state laws if applicable, or, if not applicable, coverage at least equal to that required by state laws for other work was intended to apply to federal works in states whose local compensation acts do not cover federal projects. Rogers Const. Co. v. Alaska Indus. Bd., 1954, 117 F.Supp. 817, 14 Alaska 542.

2. Coverage under local law

The provision in subsection (a) of this section that Longshoremen's Compensation Act, section 901 et seq. of Title 33, shall apply to injury or death of any employee employed in defense base, irrespective of where injury or death occurs, made inapplicable, to a workman injured while employed at military base in Puerto Rico, the provision in section 903(a) of Title 33 that compensation shall be payable thereunder only if recovery "may not validly be provided by state law," and hence local Compensation Law of Puerto Rico did not prevent recovery by insurance carrier as subrogee from corporation whose negligence caused employee's injuries. Royal Indemnity Co. v. Puerto Rico Cement Corporation, C.C.A.Puerto Rico 1944, 142 F.2d 237, certiorari denied 65 S.Ct. 89, 323 U.S. 756, 89 L.Ed. 605.

Evidence that aircraft technician was sent to India to instruct and aid in maintenance of his employer's aircraft,

and that the only personnel present at air fields where he worked was that of the Army Air Corps did not establish that technician at time of his injury was employed "at any military, air or naval base acquired by the United States" within subsection (a) (1) of this section, so as to restrict his remedy to compensation provided for thereunder and preclude his resort to McKinney's N.Y. Workmen's Compensation Law, § 21. Losch v. Curtiss-Wright Corp., 1949, 87 N.Y.S.2d 714, 275 App.Div. 1, affirmed 91 N.E.2d 332, 300 N.Y. 682.

3. Determination of coverage

An air base on former Japanese island of Ia Shima in possession of United States as result of invasion in wartime was "acquired" by United States within former provisions of this section providing compensation for employees at bases acquired after January 1, 1940, from any foreign government. Republic Aviation Corp. v. Lowe, C.C.A.N.Y.1947, 164 F.2d 18, certiorari denied 68 S.Ct. 663, 333 U.S. 845, 92 L.Ed. 1128.

Death of employee of government contractor while engaged in test flight of airplane to determine fuel consumption at air base on former Japanese island of Ia Shima was compensable under this chapter. Id.

This chapter does not require that a contract be performed wholly outside continental United States before Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, applies in respect to injury or death of an employee. Alaska Airlines, Inc. v. O'Leary, D.C.Wash.1963, 216 F.Supp. 540.

Where employee was injured while employed in constructing United States Army airfield in Saudi Arabia, compensation for injuries was governed by this chapter and he was not entitled to bring action against employer based on law of Saudi Arabia. Berven v. Fluor Corp., D.C.N.Y.1959, 171 F.Supp. 89.

Where claimant was hired under a contract to do construction work for government in Africa and he was obligated to submit to certain processing to meet passport and security requirements and a trip undertaken was not for his personal convenience but to comply with such requirements, claimant's stopping for dinner in New York City was not a deviation from the errand on which he was engaged so as to preclude compensation award, and even if it were, his resumption of his return trip to Hoboken again brought him under the coverage of the Compensation Act, section 901 et seq. of Title 33. Phoenix Indem. Co. v. Willard, D.C.N.Y.1955, 130 F.Supp. 657.

Where employee was killed in course of his employment in reconstruction of Glenn Highway, a project initiated and conducted as a federal job upon a federal highway, this chapter controlled claim for compensation for his death, irrespective of whether predominant use of highway was by local or federal authority. Rogers Const. Co. v. Alaska Indus. Bd., 1953, 116 F.Supp. 65, 14 Alaska 537, opinion adhered to 117 F.Supp. 817, 14 Alaska 542.

Defense base employe of a contractor doing public work in Alaska for United States War Department was subject to the Longshoremen's Compensation Act, section 901 et seq. of Title 33, as amended by this chapter but he was not entitled to the benefits under section 1701 of this title relating to compensation for injuries to civil employes of the United States. Huhn v. Foley Bros., 1946, 22 N.W.2d 3, 221 Minn. 279.

4. Exclusiveness of remedy

Under subsection (c) of this section that the remedy shall be exclusive, it is public policy of United States that rights of injured employee and employer should be determined by this section and the courts of the United States will not enforce a differing foreign law. Berven v. Fluor Corp., D.C.N.Y.1959, 171 F.Supp. 89.

Provision of this section requiring contractor to obtain workmen's compensation insurance in accordance with state laws if applicable, or, if not applicable, coverage at least equal to that required by state laws for other work was not intended to apply to federal construction projects in Alaska, but Congress intended that this chapter would have exclusive application to such project in any territory or possession outside of continental United States. Rogers Const. Co. v. Alaska Indus. Bd., 1954, 117 F.Supp 817, 14 Alaska 542.

This chapter has exclusive application to federal projects in the territories and possessions. Id.

The exclusive nature of remedy afforded employes entitled to benefits of Longshoremen's Compensation Act, section 901 et seq. of Title 33, was not changed by this chapter extending the benefits of said sections to defense base workers. Huhn v. Foley Bros., 1946, 22 N.W.2d 3, 221 Minn. 279. See, also, State ex rel. Haddock Engineers v. Swope, 1952, 251 P.2d 266, 56 N.M. 782.

Municipal court of St. Paul had no jurisdiction over subject matter of ac-

tion against employers by employee injured in Alaska to recover expense of trip to St. Paul for medical treatment, where employee was entitled to benefits of Longshoremen's Compensation Act, section 901 et seq. of Title 33, since his remedy under said sections was exclusive. Huhn v. Foley Bros., 1946, 22 N.W. 2d 3, 221 Minn. 279.

5. Independent contracts

Provision of this section requiring contractor to obtain workmen's compensation insurance in accordance with state laws if applicable, or, if not applicable, coverage at least equal to that required by state laws for other work was designed to apply only to such projects in the state, and intent that this chapter was to have exclusive application to federal projects in the territories and possessions could not be overridden or circumvented by contract made on the strength of such provision. Rogers Const. Co. v. Alaska Indus. Bd., 1954, 117 F.Supp. 817, 14 Alaska 542.

Where employer expressly agreed with employee to carry workmen's compensation insurance pursuant to Longshoremen's Compensation Act, section 901 et seq. of Title 33, as amended by this chapter, such compensation acts became part of the contract, and exclusive statutory remedy afforded thereunder for injured employees could not be defeated or extended by resort to a different and independent contract provision designed for another purpose and having no relation to workmen's compensation insurance. Huhn v. Foley Bros., 1946, 22 N.W. 2d 3, 221 Minn. 279.

6. Travel expenses

Where contract of employment expressly obligated employers to carry workmen's compensation insurance pursuant to Longshoremen's Compensation Act, section 901 et seq. of Title 33, as amended by this chapter and section 1701 of this title, employee injured in Alaska, being entitled to travel expense necessary to obtain medical treatment as part of compensation award, could not sue employers for expense of return trip to St. Paul under another provision of contract requiring employers to provide free return transportation if employee remained on job nine months on theory that, though he did not remain nine months, return was not voluntary, but necessary to obtain medical treatment. Huhn v. Foley Bros., 1946, 22 N.W.2d 3, 221 Minn. 279.

7. Public work

Where aircraft at time of crash in Alaska was engaged in transporting government owned material from California to Japan pursuant to a contract between the aircraft owner and military air transport service, an agency of the United States government, aircraft was being operated under a "public work" contract with United States at time of accident. Alaska Airlines, Inc. v. O'Leary, D.C. Wash.1963, 216 F.Supp. 540.

Under this chapter making Compensation Act, section 901 et seq. of Title 33, applicable to employees' injuries where public work contract is to be performed outside the continental United States, any military purpose is a "public use" within meaning of this section defining public work as being for the public use of the United States or its allies. Berven v. Fluor Corp., D.C.N.Y.1959, 171 F.Supp. 89.

The Congressional definition of "public work" in subsection (b) of this section should be followed by the courts. Republic Aviation Corp. v. Lowe, D.C.N.Y. 1946, 69 F.Supp. 472, affirmed 164 F.2d 18, certiorari denied 68 S.Ct. 663, 333 U.S. 845, 92 L.Ed. 1128.

"Public work" as used in subsection (b) of this section expressly including projects in connection with the war effort is a broad term and should be liberally construed in line with the public policy of protection for employees which was a policy embodied in the Longshoremen's Compensation Act, section 901 et seq. of Title 33, which was extended to projects in connection with the war effort by this chapter. Id.

8. Technicians and pilots

The furnishing of technical representatives and test pilots to the United States army on the former Japanese island of Ia Shima, of which the United States took possession prior to August 20, 1945, in connection with operations, servicing, repair, etc., of aircraft manufactured by the manufacturer was "public work" in connection with the war effort within subsection (b) of this section. Republic Aviation Corp. v. Lowe, D.C.N.Y.1946, 69 F.Supp. 472, affirmed 164 F.2d 18, certiorari denied 68 S.Ct. 663, 333 U.S. 845, 92 L.Ed. 1128.

An airplane pilot employed by airline company was not engaged in "public work" within this section so as to limit his remedy for injuries to that provided thereunder because of a contract between his employer and the United States Government for air transport services and

his employment in performance of the contract. Walker v. American Overseas Airlines, 1949, 90 N.Y.S.2d 537, 275 App. Div. 974.

An aircraft technician who was sent to India during wartime to instruct and aid in maintenance of his employer's aircraft was not engaged in "public work" within subsection (b) of this section so as to limit his remedy for injuries to that provided thereunder in view of Congressional intent to limit the quoted phrase to projects of a fixed and permanent nature, and to afford coverage only to those employees engaged in construction and similar work. Losch v. Curtiss-Wright Corp., 1949, 87 N.Y.S.2d 714, 275 App.Div. 1, affirmed 91 N.E.2d 332, 300 N.Y. 682.

9. Acquisition

Under subsection (a) (1) of this section requiring that at time of injury claimant, to be entitled to compensation, be employed at a military, air, or naval base "acquired" by the United States, the term "occupancy" is not a synonym for "acquired", and mere presence of air corps in an area is not proof of either voluntary or involuntary cession of sovereignty on part of any foreign government. Losch v. Curtiss-Wright Corp., 1949, 87 N.Y.S.2d 714, 275 App.Div. 1, affirmed 91 N.E.2d 332, 300 N.Y. 682.

10. Employment at bases

An airplane pilot employed by airlines company, which entered into contract to supply United States with air transport services, was not engaged in "employment at a military, air or naval base" within this section, so as to limit his remedy for injuries to that provided thereunder, because of his making scheduled landings and taking off from such bases as routine of his scheduled itinerary in performance of a contract. Walker v. American Overseas Airlines, Inc., 1949, 90 N.Y.S.2d 537, 275 App.Div. 974.

11. Widow

Under Longshoremen's and Harbor Workers' Act, section 901 et seq. of Title 33, defining "widow" of deceased employee as "only the decedent's wife living with or dependent for support upon him at time of his death", fulfillment of either one of the conditions stated in alternative qualified claimant as widow of deceased defense base employee. Turnbull v. Cyr, C.A.Cal.1951, 188 F.2d 455.

12. Child

Where minor son of deceased employee on defense project was born after inception of tuberculosis contracted by employee as result of his employment, and child's mother was found, on sufficient evidence, to be wife of employee at date of birth of child, child was legitimate, and no question of child's dependency was involved in determining his right to death benefits under this section. Turnbull v. Cyr, C.A.Cal.1951, 188 F.2d 455.

13. Findings of administrative officer

Whether claimant for death benefits as widow of employee under this section was entitled to status as widow on ground of common law marriage between claimant and deceased employee was question of fact, and district judge and Court of Appeals were bound by finding of administrative officer thereon. Turnbull v. Cyr, C.A.Cal.1951, 188 F.2d 455.

Findings of Deputy Commissioner, Bureau of Employees' Compensation, United States Department of Labor, that aircraft hauling government owned material from California to Japan pursuant to a contract with military air transport service was being operated under a public work contract within this chapter at time of crash in Alaska and that contract was to be performed outside continental United States involved questions of law and were freely reviewable without any presumption as to their correctness on appeal from award of compensation to beneficiaries of flight crew members under this chapter. Alaska Airlines, Inc. v. O'Leary, D.C.Wash.1963, 216 F.Supp. 540.

14. Subrogation

Liability under Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, of naval air base contractors to employee who contracted tuberculo-silicosis extended to allow recovery from contractors by hospitalization association by right of subrogation of value of medical expenditures made for employee. Contractors, Pacific Naval Air Bases v. Pillsbury, D.C.Cal. 1952, 105 F.Supp. 772.

15. Use of highway by Local or Federal authority

Applicability of this chapter to an admittedly federal highway project does not depend on subsequent, and perhaps fortuitous, distribution, relinquishment or nonuser of authority, functions or duties in connection with maintenance of the highway or on assumption by a territory of authority to police and regulate it, or upon extent of use thereof by territory and United States. Rogers Const.

Co. v. Alaska Indus. Bd., 1953, 116 F. Supp. 65, 14 Alaska 537, opinion adhered to 117 F.Supp. 817, 14 Alaska 542.

16. Presumptions

Presumption of applicability of Longshoremen's Act, section 901 et seq. of Title 33, is applicable to factual situations arising under this chapter. Alaska Airlines, Inc. v. O'Leary, D.C.Wash.1963, 216 F. Supp. 540.

Where aircraft engaged in transporting government owned material from California to Japan pursuant to a contract between the airlines and military transport service, an agency of the United States government, crashed in Alaska and five aircraft flight crew members were killed, there was no presumption that this chapter was applicable in determining whether compensation was properly awarded to flight crew members' beneficiaries under Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33. Id.

If workman's disability arose in course of his employment, it must be presumed to have arisen therefrom, unless there is substantial evidence to the contrary. Turner v. Willard, D.C.N.Y.1956, 154 F. Supp. 352.

17. Evidence, sufficiency of

Evidence that claimant for death benefits under this section for death of employee lived with employee in Colorado, which recognizes common-law marriages, that child was born while relationship was in existence, and that parties were recognized as husband and wife during this time, sustained finding that claimant was widow of deceased within such section, and, therefore, entitled to benefits thereof. Turnbull v. Cyr, C.A.Cal. 1951, 188 F.2d 455.

Evidence sustained finding that claimant, who contracted tuberculosis during three years that she was employed on Okinawa, worked in close contact with Okinawan coemployees exposing her to persons having four to eight times normal tuberculosis rate. Gilbert Pacific, Inc. v. Donovan, D.C.La.1961, 198 F.Supp. 297, affirmed 304 F.2d 882.

In suit by employer to set aside compensation order granted to military base employee injured in automobile accident on Guam, evidence did not support finding that necessity for further recreation off employer's premises was recognized by employer. Brown-Pacific-Maxon, Inc. v. Pillsbury, D.C.Cal.1953, 132 F.Supp. 421.

In suit by employer to set aside compensation order granted to military base employee injured in automobile accident on Guam, evidence did not support finding of Deputy Commissioner that employee was exposed to such unusual traffic hazards that traffic accidents were special risk of that employment, and injury was not compensable. Id.

Evidence sustained finding of Deputy Commissioner that death of employee arose out of and in course of employment and was not result of employee's willful intention to kill himself. Hawaiian Dredging Co. v. Hanson, D.C. Hawaii 1953, 114 F.Supp. 859.

18. Questions for court

Whether claimants for benefits under this section were within class of persons entitled to such benefits was question of law for court to determine. Turnbull v. Cyr, C.A.Cal.1951, 188 F.2d 455.

§ 1652. Computation of benefits; application to aliens and nonnationals

(a) The minimum limit on weekly compensation for disability, established by section 906(b) of Title 33, and the minimum limit on the average weekly wages on which death benefits are to be computed, established by section 909(e) of Title 33, shall not apply in computing compensation and death benefits under this chapter.

(b) Compensation for permanent total or permanent partial disability under section 908(c) (21) of Title 33, or for death under this chapter to aliens and nonnationals of the United States not residents of the United States or Canada shall be in the same amount as provided for residents, except that dependents in any foreign

country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year immediately prior to the date of the injury, and except that the Secretary of Labor may, at his option or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to such aliens or nonnationals of the United States by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary. Aug. 16, 1941, c. 357, § 2, 55 Stat. 623; 1946 Reorg.Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg.Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271.

Historical Note

Transfer of Functions. In text of subsec. (b), "Secretary of Labor" was substituted for "Federal Security Administrator", and "Secretary" was substituted for "Administrator", by 1950 Reorg.Plan No. 19, set out as a note under section 778 of Title 5, Executive Departments and Government Officers and Employees.

United States Employees' Compensation Commission, formerly referred to in subsec. (b), was abolished and its functions transferred to the Federal Security Administrator by 1946 Reorg.Plan No. 2, set out as a note under section 133y—16 of Title 5.

Notes of Decisions

Library references

Workmen's Compensation ⇐801 et seq.
C.J.S. Workmen's Compensation § 289.

1. Law governing

Applicable law determining whether woman who married workman in French Morocco 19 days before prior wife's District of Columbia divorce from workman became final had such valid marital status as to be surviving wife entitled to compensation for death of workman some three years later at defense base in French Morocco was French law and not District of Columbia law or law of New York where foreign compensation district having jurisdiction of claim sits. Gibson v. Hughes, D.C.N.Y.1961, 192 F.Supp. 564.

§ 1653. Compensation districts; judicial proceedings

(a) The Secretary of Labor is authorized to extend compensation districts established under the Longshoremen's and Harbor Workers' Compensation Act, or to establish new compensation districts, to include any area to which this chapter applies; and to assign to each such district one or more deputy commissioners, as the Secretary may deem necessary.

(b) Judicial proceedings provided under sections 918 and 921 of Title 33 in respect to a compensation order made pursuant to this chapter shall be instituted in the United States district court of the judicial district wherein is located the office of the deputy commissioner whose compensation order is involved if his office is located in a judicial district, and if not so located, such judicial proceedings shall be instituted in the judicial district nearest the base at which the injury or death occurs. Aug. 16, 1941, c. 357, § 3, 55 Stat. 623;

1946 Reorg.Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg.Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271.

Historical Note

References in Text. The Longshoremen's and Harbor Workers' Compensation Act, referred to in subsec. (a), is classified to chapter 18 of Title 33, Navigation and Navigable Waters.

Transfer of Functions. In text of subsec. (a), "Secretary of Labor" was substituted for "Federal Security Administrator", and "Secretary" was substituted for "Administrator", by 1950 Reorg.Plan No. 19, set out as a note under section 778 of Title 5, Executive Departments and Government Officers and Employees.

United States Employees' Compensation Commission, formerly referred to in subsec. (a), was abolished and its functions transferred to the Federal Security Administrator by 1946 Reorg.Plan No. 2, set out as a note under section 133y—16 of Title 5.

Cross References

Establishment of compensation districts under Longshoremen's and Harbor Workers' Compensation Act, see section 939(b) of Title 33, Navigation and Navigable Waters.

Notes of Decisions

1. Office

A room designated by a Deputy Commissioner for holding conferences of an hour or two each week with injured persons in regard to compensation under Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, was not an "office", within provision of subsection (b) of this section. Lockheed Overseas Corp. v. Pillsbury, D.C.Cal.1944, 58 F.Supp. 375.

2. Conclusiveness of decision

Deputy Commissioner's findings, in compensation case, are to be accepted unless they are unsupported by substantial evidence on the record considered as a whole. U. S. v. Pan. Am. World Airways Inc., C.A.Fla.1962, 299 F.2d 74, certiorari denied 82 S.Ct. 1556, 370 U.S. 918, 8 L.Ed.2d 499, rehearing denied 83 S.Ct. 17, 371 U.S. 856, 9 L.Ed.2d 93.

The decision of deputy commissioner under this chapter is binding if supported by evidence and deductions and inferences which may be drawn by him from the evidence should be taken as established facts and are not judicially reviewable. C. F. Lytle Co. v. Whipple, C.C.A.Wash.1946, 156 F.2d 155.

The weight to be given to administrative interpretation of this chapter should be the same as that which the courts are required to give to an administrative interpretation of the Longshoremen's Compensation Act, section 901 et seq. of Title 33. Republic Aviation Corp. v. Lowe, D.C.N.Y.1946, 69 F.Supp. 472, affirmed 164 F.2d 18, certiorari denied 68 S.Ct. 663, 333 U.S. 845, 92 L.Ed. 1128.

A compensation award under this chapter may not be set aside because deemed to be against the weight of the evidence, but there must be an error of law, and a conclusion of the administrative agency that a case falls within the Federal jurisdiction is entitled to great weight and will be rejected only in cases of apparent error. Id.

3. Jurisdiction

The provision of subsection (b) of this section that an action to enjoin enforcement of a compensation order shall be instituted in Federal District Court of judicial district wherein office of Deputy Commissioner, whose order is involved, is located, is not merely one of venue but is jurisdictional. Lockheed Overseas Corp. v. Pillsbury, D.C.Cal.1944, 58 F. Supp. 375.

4. Evidence

Evidence supported Deputy Commissioner's finding that claimant's tubercu-

losis was caused to develop and become disabling either by contraction of original infection from unknown sources or by reactivation of a previous undisclosed and arrested pulmonary tuberculosis by conditions of his employment, principally overwork and exposure on a defense base project on Samoa, and entitled claimant to compensation under the Longshoremen's and Harbor Workers' Compensation Act, § 901 et seq. of Title 33. Contractors v. Pillsbury, C.C.A.Cal. 1945, 150 F.2d 310.

5. Questions of law

On appeal from judgment dismissing proceeding to set aside compensation award made under this chapter for death of employee in Alaska, only question of law involved was whether there was evidence to support findings of deputy commissioner that the death was not caused solely by employee's intoxication and that death arose out of and in course of his employment. C. F. Lytle Co. v. Whipple, C.C.A.Wash.1946, 156 F.2d 155.

6. Questions of fact

In proceeding for compensation under this chapter for death of employee in Alaska who fell from employer's truck while returning to barracks, whether employee was departing or had departed from course of his employment at time of his death and employee's intoxication and its effect on his actions preceding his death were questions of fact to be determined by deputy commissioner. C. F. Lytle Co. v. Whipple, C.C.A.Wash. 1946, 156 F.2d 155.

§ 1654. Persons excluded from benefits

This chapter shall not apply in respect to the injury or death of (1) an employee subject to the provisions of the Federal Employees' Compensation Act; (2) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, or profession of the employer; and (3) a master or member of a crew of any vessel. Aug. 16, 1941, c. 357, § 4, 55 Stat. 623.

Historical Note

References in Text. The Federal Employees' Compensation Act, referred to in the text, is classified to chapter 15 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

Library references

Workmen's Compensation ⇐163.
C.J.S. Workmen's Compensation § 36.

1. Course of employment

Where diesel generator operator at defense base in British West Indies was subject to call for emergencies when off duty, there was recreation center on base, employer transported employees without charge by bus to town and employees were prohibited from using jeep for recreation purposes, death of operator while returning in jeep from native club in town where he had had a beer after working hours did not arise out of or in course of employment and hence was not compensable. U. S. v. Pan Am. World Airways Inc., C.A.Fla.1962, 299 F.2d 74, certiorari denied 82 S.Ct. 1556, 370 U.S. 918, 8 L.Ed.2d 499, rehearing denied 83 S.Ct. 17, 371 U.S. 856, 9 L.Ed.2d 93.

In proceeding for compensation for death of employee in Alaska while employed by companies engaged in prosecution of contract with the United States under this chapter evidence that while employee was standing in body of employer's truck on return to barracks, a wheel struck a hole in road or obstruction catapulting employee over side of truck sustained finding that death was not caused solely by employee's intoxication and that his death arose out of and in course of employment, warranting compensation award. C. F. Lytle Co. v. Whipple, C.C.A.Wash.1946, 156 F.2d 155.

Where one, awaiting transportation to Hawaii to commence work on defense base under contract of employment which provided for transportation and full compensation to commence immediately but made no provision for employee's board and lodging, was struck by automobile while returning to hotel from Sunday evening stroll, Deputy Commissioner's finding that resulting injury occurred "in course of" and "arose out of employment" within Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, is not supported by the evidence. Pillsbury v. Liberty Mut. Ins. Co., C.C.A.Cal.1944, 143 F.2d 807.

Where employee engaged in a National Defense activity worked a seven-day week of over eight hours per day, injury suffered by employee while on two days' recreation and while being transported in working clothes, and without charge, by an independent contractor hired by employers, in vehicle bound for site of employee's work and contracted for carriage there of other employees is compensable as "arising out of and in course of employment." Liberty Mut. Ins. Co. v. Gray, C.C.A.Hawaii, 1943, 137 F.2d 926.

Tuberculosis contracted by claimant whose duties on Okinawa included fingerprinting some 800 Okinawan coemployees, exposing her to persons having four to eight times normal tuberculosis rate, arose out of and during the course of her employment and was compensable under the Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33. Gilbert Pacific, Inc. v. Donovan, D.C.La.1961, 198 F.Supp. 297, affirmed 304 F.2d 882.

Workman, employed as chief inspector for construction area on Pacific island, was injured in course of his employment when his employer's jeep overturned while workman was traveling in it, during working hours, to confer with a fellow-employee concerning bowling league organized by employer for its employees' recreation. Turner v. Willard, D.C.N.Y. 1956, 154 F.Supp. 352.

Test for recovery of compensation is not causal relation between nature of workman's employment and accident; and it is not necessary that workman be engaged, at time of injury, in activity of benefit to his employer; only requirement being that obligations or conditions of employment create zone of special danger out of which injury arose. Id.

If work creates necessity for travel, workman is in "course of his employment" though he is serving at same time some purpose of his own; but if work has no part in creating necessity for travel and journey would have gone forward even though business errand were dropped, travel is personal and risk to workman is personal. Id.

Where military base employee on Guam left premises where he was housed by employer, and rode into city during his off hours to obtain refreshments, and was injured when vehicle in which he was riding was struck by drunken driver, employee was not within scope of his employment at time of accident and was not entitled to compensation. Brown-Pacific-Maxon, Inc. v. Pillsbury, D.C.Cal. 1953, 132 F.Supp. 421.

2. Test pilot

Where test pilot was killed while testing airplane at Ia Shima, a former Japanese island, which was occupied by United States army prior to August 20, 1945, and employer of test pilot had contract with United States army to furnish technical representatives and test pilots in connection with operations, servicing, repair, etc., of aircraft manufactured by employer, the test pilot's employment was under a contract that was included within this chapter. Republic Aviation Corp. v. Lowe, D.C.N.Y.1946, 69 F.Supp. 472, affirmed 164 F.2d 18, certiorari denied 68 S.Ct. 663, 33 U.S. 845, 92 L.Ed. 1128.

3. Member of a crew

This chapter, which in general incorporates remedies of the Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, saves remedies available under the Jones Act, section 688 of Title 46, for persons, otherwise subject to this Chapter, who also are members of a crew of any vessel. Grimes v. Raymond Concrete Pile Co., Mass.1958, 78 S.Ct. 687, 356 U.S. 252, 2 L.Ed.2d 737.

In suit by a pile driver employed to assist in installation of a Texas tower for injuries sustained while he was being transferred at sea in a "navy life ring" from a tug to the tower, evidence created a fact question as to whether he was a crew member entitled, under exclusion in this section to avail himself of a remedy under the Jones Act, section 688 of Title 46. Id.

4. Crew of aircraft

Where aircraft at time of crash in Alaska was transporting government owned material from California to Japan pursuant to contract between aircraft owner

and military air transport service, an agency of United States government, performance of contract at time of accident was inside United States, and beneficiaries of flight crew members who were killed were not entitled to compensation under this chapter. Alaska Airlines, Inc. v. O'Leary, D.C.Wash.1963, 216 F.Supp. 540.

CHAPTER 12.—COMPENSATION FOR INJURY, DEATH, OR DETENTION OF EMPLOYEES OF CONTRACTORS WITH THE UNITED STATES OUTSIDE THE UNITED STATES

SUBCHAPTER I.—COMPENSATION, REIMBURSEMENT, ETC., BY SECRETARY OF LABOR

SUBCHAPTER II.—MISCELLANEOUS PROVISIONS

Historical Note

Repeals. Section 6 of Act June 30, 1953, c. 176, 67 Stat. 135, repealed section 1(a)(13) of Joint Res. July 3, 1952, c. 570, 66 Stat. 332, which, as amended by Joint Res. Mar. 31, 1953, c. 13, § 1, 67 Stat. 18, provided for the continuation of this chapter until July 1, 1953.

Section 6 of said Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, c. 339, 66 Stat. 96; Joint Res. June 14, 1952, c. 437, 66 Stat. 137; Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

SUBCHAPTER I.—COMPENSATION, REIMBURSEMENT, ETC., BY SECRETARY OF LABOR

§ 1701. Injury or death; detention; limitation of benefits; exclusion

(a) In case of injury or death resulting from injury—

(1) to any person employed by a contractor with the United States, if such person is an employee specified in sections 1651–1654 of this title, and no compensation is payable with respect to such injury or death under said sections; or

(2) to any person engaged by the United States under a contract for his personal services outside the continental United States; or

(3) to any person employed outside the continental United States as a civilian employee paid from nonappropriated funds administered by the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Store Ashore, Navy exchanges, Marine Corps exchanges, officers' and noncommissioned officers' open messes, enlisted men's clubs, service clubs, special service activities, or any other instrumentality of the United States under the jurisdiction of the Department of Defense and conducted for the mental, physical, and morale improvement of personnel of the Department of Defense and their dependents; or

(4) to any person who is an employee specified in section 1(a)(5) of the Defense Base Act, as amended, if no compensation is payable with respect to such injury or death under such Act, or to any person engaged under a contract for his personal services outside the United States approved and financed by the United States under the Mutual Security Act of 1954, as amended (other than title II of chapter II thereof unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States Government, determines a contract financed under a successor provision of any successor Act should be covered by this section): *Provided*, That in cases where the United States is not a formal party to contracts approved and financed under the Mutual Security Act of 1954, as amended, the Secretary, upon the recommendation of the head of any department or agency of the United States, may, in the exercise of his discretion, waive the application of the provisions of this subparagraph with respect to any such contracts, subcontracts, or subordinate contracts, work location under such contracts, subcontracts, or subordinate contracts, or classification of employees; or

(5) to any person employed or otherwise engaged for personal services outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense.

and such injury proximately results from a war-risk hazard, whether or not such person then actually was engaged in the course of his employment, the provisions of sections 751–756, 757–781, 783–791 and 793 of Title 5, and as modified by this chapter, shall apply with respect thereto in the same manner and to the same extent as if the person so employed were a civil employee of the United States and were injured while in the performance of his duty, and any compensation found to be due shall be paid from the compensation fund established pursuant to section 785 of Title 5. This subsection shall not be construed to include any person who would otherwise come within the purview of sections 751–756, 757–781, 783–791 and 793 of Title 5.

(b) (1) Any person specified in subsection (a) of this section who—

(A) is found to be missing from his place of employment, whether or not such person then actually was engaged in the course of his employment, under circumstances supporting an inference that his absence is due to the belligerent action of a hostile force or person, or

(B) is known to have been taken by a hostile force or person as a prisoner, hostage, or otherwise, or

(C) is not returned to his home or to the place where he was employed by reason of the failure of the United States or its contractor to furnish transportation,

until such time as he is returned to his home, to the place of his employment, or is able to be returned to the jurisdiction of the United States, shall, under such regulations as the Secretary may prescribe, be regarded solely for the purposes of this subsection as totally disabled, and the same benefits as are provided for such disability under this subchapter shall be credited to his account and be payable to him for the period of such absence or until his death is in fact established or can be legally presumed to have occurred: *Provided*, That if such person has dependents residing in the United States or its Territories or possessions (including the United States Naval Operating Base, Guantanamo Bay, Cuba, the Canal Zone, and the Philippine Islands), the Secretary during the period of such absence may disburse a part of such compensation, accruing for such total disability, to such dependents, which shall be equal to the monthly benefits otherwise payable for death under this subchapter, and the balance of such compensation for total disability shall accrue and be payable to such person upon his return

from such absence. Any payment made pursuant to this subsection shall not in any case be included in computing the maximum aggregate or total compensation payable for disability or death, as provided in section 1702(a) of this title: *Provided further*, That no such payment to such person or his dependent, on account of such absence, shall be made during any period such person or dependent, respectively, has received, or may be entitled to receive, any other payment from the United States, either directly or indirectly, because of such absence, unless such person or dependent refunds or renounces such other benefit or payment for the period claimed.

Benefits found to be due under this subsection shall be paid from the compensation fund established pursuant to section 785 of Title 5: *Provided*, That the determination of dependents, dependency, and amounts of payments to dependents shall be made in the manner specified in sections 751–756, 757–781, 783–791 and 793 of Title 5: *Provided further*, That claim for such detention benefits shall be filed in accordance with and subject to the limitation provisions of sections 751–756, 757–781, 783–791 and 793 of Title 5, as modified by section 1706(c) of this title: *And provided further*, That except in cases of fraud or willful misrepresentation, the Secretary may waive recovery of money erroneously paid under this subdivision whenever he finds that such recovery would be impracticable or would cause hardship to the beneficiary affected: *And provided further*, That where such person is found to be missing from his place of employment, whether or not such person then actually was engaged in the course of his employment, under circumstances supporting an inference that his absence is due to the belligerent action of a hostile force or person or is known to have been taken by a hostile force or person as a prisoner, hostage, or otherwise, the amount of benefits to be credited to the account of such person under this subsection, and for the purposes of this subsection only, shall be 100 per centum of the average weekly wages of such person, except that in computing such benefits such average weekly wages (a) shall not exceed the average weekly wages paid to civilian employees of the United States in the same or most similar occupation in the area nearest to the place of employment where such person was last employed, and (b) shall not exceed the average weekly wages of such absent person at the time such absence began; and 70 per centum of such average weekly wage so determined shall be disbursed to the dependent or dependents of such person, irrespective of the limitations of section 909 of Title 33, but should there be more than one such dependent, the distribution of such 70 per centum shall be proportionate to the percentages allowed for dependents by section 909 of Title 33, and if such manner of disbursement in any case would result in injustice or excessive allowance for a dependent, the Secretary may, in his discretion, modify such percentage or apportionment to meet the requirements of the case; and in such cases

benefits for detention shall accrue from January 1, 1942, unless the beginning of absence occurred upon a later date in which event benefits shall accrue from such later date, and for the period of such absence shall be 100 per centum of the average weekly wages, determined as herein provided: *And provided further*, That compensation for disability under this subchapter (except under allowance for scheduled losses of members or functions of the body, within the purview of section 1702(a) of this title) shall not be paid in any case in respect to any period of time during which benefits for detention may accrue under this subchapter in the same case, and should a person entitled to benefits for detention also be entitled to workmen's compensation or similar benefits under any other law, agreement, or plan (except allowances for scheduled losses of members or functions of the body), where such other benefits are paid or to be paid directly or indirectly by the United States, the amount thereof accruing as to the period of absence shall be taken into account and the benefits credited to the account of the detained person reduced accordingly: *And provided further*, That where through mistake of fact, absence of proof of death, or error through lack of adequate information or otherwise, payments as for detention have in any case been erroneously made or credited, any resulting overpayment of detention benefits (the recovery of which is not waived as otherwise provided for in this section) shall be recouped by the Secretary in such manner as he shall determine from any unpaid accruals to the account of the detained person, and if such accruals are insufficient for such purpose, then from any allowance of compensation for injury or death in the same case (whether under this subchapter or under any other law, agreement, or plan, if the United States pays, or is obligated to pay, such benefits, directly or indirectly), but only to the extent of the amount of such compensation benefits payable for the particular period of such overpayment, and in cases of erroneous payments of compensation for injury or death, made through mistake of fact, whether under this subchapter or under any other law, agreement, or plan (if the United States is obligated to pay such compensation, directly or indirectly), the Secretary is authorized to recoup from any unpaid benefits for detention, the amount of any overpayment thus arising; and any amounts recovered under this section shall be covered into such compensation fund, and for the foregoing purposes the Secretary shall have a right of lien, intervention, and recovery in any claim or proceeding for compensation.

(2) Upon application by such person, or someone on his behalf, the Secretary may, under such regulations as he may prescribe, furnish transportation or the cost thereof (including reimbursement) to any such person from the point where his release from custody by a hostile force or person is effected, to his home, the place of his employment, or other place within the jurisdiction of the United

States; but no transportation, or the cost thereof, shall be furnished under this paragraph where such person is furnished such transportation, or the cost thereof, under any agreement with his employer or under any other provision of law.

(3) In the case of death of any such person, if his death occurred away from his home, the body of such person shall, in the discretion of the Secretary, and if so desired by his next of kin, near relative, or legal representative, be embalmed and transported in a hermetically sealed casket or other appropriate container to the home of such person or to such other place as may be designated by such next of kin, near relative, or legal representative. No expense shall be incurred under this paragraph by the Secretary in any case where death takes place after repatriation, unless such death proximately results from a war-risk hazard.

(4) Such benefits for detention, transportation expenses of repatriated persons, and expenses of embalming, providing sealed or other appropriate container, and transportation of the body, and attendants (if required), as approved by the Secretary, shall be paid out of the compensation fund established under section 785 of Title 5.

(c) Compensation for permanent total or permanent partial disability or for death payable under this section to persons who are not citizens of the United States and who are not residents of the United States or Canada, shall be in the same amount as provided for residents; except that dependents in any foreign country shall be limited to surviving wife or husband and child or children, or if there be no surviving wife or husband or child or children, to surviving father or mother whom such person has supported, either wholly or in part, for the period of one year immediately prior to the date of the injury; and except that the Secretary, at his option, may commute all future installments of compensation to be paid to such persons by paying to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary.

(d) The provisions of this section shall not apply in the case of any person (1) whose residence is at or in the vicinity of the place of his employment, and (2) who is not living there solely by virtue of the exigencies of his employment, unless his injury or death resulting from injury occurs or his detention begins while in the course of his employment, or (3) who is a prisoner of war or a protected person under the Geneva Conventions of 1949 and who is detained or utilized by the United States. Dec. 2, 1942, c. 668, Title I, § 101, 56 Stat. 1028; Dec. 23, 1943, c. 380, Title I, 57 Stat. 626; 1946 Reorg. Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 7, 1946, c. 805, § 1, 60 Stat. 899; 1950 Reorg.Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; June 30, 1953, c. 176, §§ 2, 3, 67 Stat. 135; June 30, 1958, Pub.L. 85–477, Ch. V, § 502(g), 72 Stat. 273; Aug. 8, 1958, Pub.L. 85–608, Title I, §§ 101, 104, Title IV, § 401,

72 Stat. 536, 537, 539; June 25, 1959, Pub.L. 86–70, § 42(a), 73 Stat. 151; Sept. 4, 1961, Pub.L. 87–195, Pt. IV, § 702, 75 Stat. 463.

Historical Note

References in Text. Section 1(a) (5) of the Defense Base Act, as amended, referred to in subsec. (a) (4), is classified to section 1651(a) (5) of this title.

The Mutual Security Act of 1954, as amended, referred to in subsec. (a) (4), was classified to chapter 24 of Title 22, Foreign Relations and Intercourse, and was repealed, with certain exceptions, by section 642(a) of Pub.L. 87–195. Parts I to III of Pub.L. 87–195 also enacted the International Development, Peace and Security Program, effective September 4, 1961, which is classified to chapter 32 of Title 22.

Reference in subsec. (b) (1) to Philippine Islands, see note under section 1651 of this title.

1961 Amendment. Subsec. (a) (4). Pub. L. 87–195 extended coverage in those cases where the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States Government, determines a contract financed under a successor provision of any successor Act to the Mutual Security Act of 1954 should be covered by this section.

1959 Amendment. Subsec. (a). Pub.L. 86–70 eliminated words "or in Alaska or the Canal Zone" following "continental United States" in pars. (2), (3) and (5).

1958 Amendment. Subsec. (a) (2). Pub. L. 85–608, § 101(a), substituted "outside the continental United States or in Alaska or the Canal Zone" for "outside the United States or in Hawaii, Alaska, Puerto Rico, or the Virgin Islands".

Subsec. (a) (3). Pub.L. 85–608, § 101 (b), substituted provisions relating to injuries to civilian employees outside the continental United States or in Alaska or the Canal Zone paid from nonappropriated funds and who are employed in connection with activities conducted for the mental, physical, and morale improvement of personnel of the Department of Defense and their dependents for provisions which related to injuries to persons employed as civilian employees of post exchanges or ship-service stores outside the United States or in Hawaii, Alaska, Puerto Rico, or the Virgin Islands.

Subsec. (a) (4). Pub.L. 85–477 added subsec. (a) (4).

Subsec. (a) (5). Pub.L. 85–608, § 101 (c), added subsec. (a) (5).

Subsec. (b). Pub.L. 85–608, § 104, substituted "a hostile force or person" for "an enemy" in four instances and for "the enemy" in one instance.

Subsec. (c). Pub.L. 85–608, § 401, reenacted subsec. (c) and also repealed section 2 of Act June 30, 1953 which had previously repealed subsec. (c).

Subsec. (d). Pub.L. 85–608, § 101(d), substituted provisions making section inapplicable to persons who are prisoners of war or protected persons and who are detained or utilized by the United States for provisions which made section inapplicable to persons who are not citizens of the United States and who suffered an injury, disability, death, or detention by the enemy subsequent to June 30, 1953.

1953 Amendment. Subsec. (c). Act June 30, 1952, § 2, repealed subsec. (c) which provided for amount of compensation payable to noncitizens and nonresidents for permanent total or permanent partial disability or death, limited eligible dependents and permitted Secretary to commute future installments of compensation.

Subsec. (d). Act June 30, 1953, § 3, added clause (3).

1946 Amendment. Act Aug. 7, 1946, made benefits payable for detention uniform from the date of capture rather than at a reduced rate for 2 years as was the case formerly, prevented dual payments without impairing compensation rights for disability which continues after repatriation, and provided for adjustments of overpayments made under a mistake of facts.

1943 Amendment. Subsec. (b) (1). Act Dec. 23, 1943, inserted the fourth proviso in the second paragraph thereof.

Effective Date of 1959 Amendment. Amendment of section by Pub.L. 86–70 effective June 25, 1959, see section 47(g) of Pub.L. 86–70, set out as a note under section 1651 of this title.

Effective Date of 1958 Amendment. Amendment of section by Pub.L. 85–608 effective June 30, 1958, see note set out under section 1651 of this title.

Effective Date of 1943 Amendment. Act Dec. 23, 1943, provided that: "The

amendment * * * [to subsec. (b) (1)] shall become effective the first day of the month next following the approval of this Act. [December 23, 1943]".

Effective Date. Section 107 of Act Dec. 2, 1942, provided that: "This title [sections 1701–1706 of this title] shall take effect as of December 7, 1941".

Retroactive Effect of 1946 Amendment; Review of Cases. Section 2 of Act Aug. 7, 1946, provided that: "The provisions of section 1 of this Act [amending this section] shall apply in all cases coming within the purview of section 101(b) of such Act of December 2, 1942 [subsection (b) of this section], and shall be applied retrospectively to January 1, 1942; and the United States Employees' Compensation Commission [now the Secretary of Labor] is authorized to review any case affected by such provisions, and to make the adjustment of benefits which they require. In cases in which claims for benefits under such section 101(b) [subsection (b) of this section] have been adjudicated, and the detained person has died since such adjudication, any amounts found to be due upon such review shall be paid to his legal representative."

Short Title. Section 208 of Act Dec. 2, 1942, as added by Pub.L. 85–608, § 105, provided that Titles I and II of Act Dec. 2, 1942, which are classified to subchapters I and II of this chapter, should be popularly known as the "War Hazards Compensation Act".

Repeals. Section 702 of Pub.L. 87–195, which amended this section, was repealed by section 401 of Pub.L. 87–565, Pt. IV, Aug. 1, 1962, 76 Stat. 263, except in so far as section 702 affected this section.

Section 6 of Act June 30, 1953, repealed section 1(a) (13) of Joint Res. July 3, 1952, c. 570, 66 Stat. 331, which defined terms "enemy", "allies", "national war effort", and "war effort".

Transfer of Functions. In text of this section, "Secretary", referring to the Secretary of Labor, was substituted for "Administrator" by 1950 Reorg.Plan No. 19, set out as a note under section 778 of Title 5, Executive Departments and Government Officers and Employees.

"Administrator" was substituted for "Commission", and "he" and "his" were substituted for "it" and "its", respectively, by 1946 Reorg.Plan No. 2, set out as a note under section 133y—16 of Title 5.

Increase in Compensation for Injuries and Death from Injuries Sustained before July 1, 1946. Pub.L. 87–380, Oct. 4, 1961, 75 Stat. 809, provided:

"That, notwithstanding any other provision of law the monthly disability and death compensation payable pursuant to section 101(a) of the War Hazards Compensation Act [subsec. (a) of this section] shall, with respect to injuries or deaths resulting from injury sustained prior to July 1, 1946, be increased by 15 per centum.

"Sec. 2. The increase authorized by this Act shall be effective only with respect to disability and death compensation payable for periods commencing on and after the date of enactment of this Act [Oct. 4, 1961]."

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 7, 1946, see 1946 U.S. Code Cong.Service, p. 1439. See, also, Act June 30, 1953, 1953 U.S.Code Cong. and Adm.News, p. 1783; Pub.L. 85–477, 1958 U.S.Code Cong. and Adm.News, p. 2755; Pub.L. 85–608, 1958 U.S.Code Cong. and Adm.News, p. 3321; Pub.L. 86–70, 1959 U.S.Code Cong. and Adm.News, p. 1675; Pub.L. 87–195, 1961 U.S.Code Cong. and Adm.News, p. 2472.

Notes of Decisions

Library references

Workmen's Compensation ⇐163.
C.J.S. Workmen's Compensation § 36.

1. Purpose

Purpose of this section authorizing compensation for death or detention of employees of war contractors outside the United States when due to enemy action is to provide compensation for loss of earnings to those employees who in time of war are held as prisoners. In re Worley's Estate, 1948, 197 P.2d 773, 87 C.A. 2d 760.

2. Determination of coverage

Defense base employe of a contractor doing public work in Alaska for United States War Department was subject to the Longshoremen's Compensation Act, section 901 et seq. of Title 33, as amended by sections 1651–1654 of this title but he was not entitled to the benefits un-

der this section relating to compensation for injuries to civil employees of the United States. Huhn v. Foley Bros., 1946, 22 N.W.2d 3, 221 Minn. 279.

3. Travel expenses

Where contract of employment expressly obligated employers to carry workmen's compensation insurance pursuant to Longshoremen's Compensation Act, section 901 et seq. of Title 33, as amended by this section and sections 1651–1654 of this title, employee injured in Alaska, being entitled to travel expense necessary to obtain medical treatment as part of compensation award, could not sue employers for expense of return trip to St. Paul under another provision of contract requiring employers to provide free return transportation if employee remained on job nine months on theory that, though he did not remain nine months, return was not voluntary, but necessary to obtain medical treatment. Huhn v. Foley Bros., 1946, 22 N.W.2d 3, 221 Minn. 279.

4. Basis of payments

Where decedent who was taken prisoner was a civilian employee rendering services for the navy and his wages were in effect continued by the government during his detention under this section authorizing compensation for detention of employees of war contractors outside the United States, payments so made were not a "gift", but were based on sufficient consideration so as to make them a part of employee's "community property" and distributable as such on his death. In re Worley's Estate, 1948, 197 P.2d 773, 87 C.A.2d 760.

§ 1702. Application of Longshoremen's and Harbor Workers' Compensation Act

(a) In the administration of the provisions of sections 751–756, 757–781, 783–791 and 793 of Title 5, with respect to cases coming within the purview of section 1701 of this title, the scale of compensation benefits and the provisions for determining the amount of compensation and the payment thereof as provided in sections 908 and 909 of Title 33, so far as the provisions of said sections can be applied under the terms and conditions set forth therein, shall be payable in lieu of the benefits, except medical benefits, provided under sections 751–756, 757–781, 783–791 and 793 of Title 5: *Provided*, That the total compensation payable under this subchapter for injury or death shall in no event exceed the limitations upon compensation as fixed in section 914(m) of Title 33 as such section may from time to time be amended except that the total compensation shall not be less than that provided for in the original enactment of this chapter.

(b) For the purpose of computing compensation with respect to cases coming within the purview of section 1701 of this title, the provisions of sections 906 and 910 of Title 33 shall be applicable: *Provided*, That the minimum limit on weekly compensation for disability, established by section 906(b) of Title 33, and the minimum limit on the average weekly wages on which death benefits are to be computed, established by section 909(e) of Title 33, shall not apply in computing compensation under this subchapter. Dec. 2, 1942, c. 668, Title I, § 102, 56 Stat. 1031; July 3, 1948, c. 826, § 4(c), 62 Stat. 1242; Aug. 8, 1958, Pub.L. 85–608, Title I, § 102, 72 Stat. 536.

Library references: Workmen's Compensation ⇐45; C.J.S. Workmen's Compensation § 20.

Historical Note

References in Text. Longshoremen's and Harbor Workers' Compensation Act, referred to in the catchline, is classified to chapter 18 of Title 33, Navigation and Navigable Waters.

1958 Amendment. Subsec. (a). Pub.L. 85-608 omitted proviso that required any amendment to the Longshoremen's and Harbor Workers' Compensation Act which increased the amount of benefits payable for injury or death to be applied in the administration of this section as if the amendment had been in effect at the time of the particular injury or death.

1948 Amendment. Subsec. (a). Act July 3, 1948 added all text in proviso beginning "as fixed in section 914(m) of Title 33."

Effective Date of 1958 Amendment. Amendment of section by Pub.L. 85-608 effective June 30, 1958, see note set out under section 1651 of this title.

Effective Date. Section effective Dec. 7, 1941, see note under section 1701 of this title.

Benefits Adjudicated Prior to August 8, 1958. Section 102 of Pub.L. 85-608, provided in part that the amendment to subsec. (a) of this section by Pub.L. 85-608 shall not affect benefits adjudicated thereunder prior to August 8, 1958.

Legislative History: For legislative history and purpose of Act July 3, 1948, see 1948 U.S.Code Cong.Service, p. 2317. See, also, Pub.L. 85-608, 1958 U.S.Code Cong. and Adm.News, p. 3321.

§ 1703. Definition

As used in this subchapter, the term "contractor with the United States" includes any subcontractor or subordinate subcontractor with respect to the contract of such contractor. Dec. 2, 1942, c. 668, Title I, § 103, 56 Stat. 1031.

Historical Note

Effective Date. Section effective Dec. 7, 1941, see note under section 1701 of this title.

§ 1704. Reimbursement

(a) Where any employer or his insurance carrier or compensation fund pays or is required to pay benefits—

(1) to any person or fund on account of injury or death of any person coming within the purview of this subchapter or sections 1651–1654 of this title, if such injury or death arose from a war-risk hazard, which are payable under any workmen's compensation law of the United States or of any State, Territory, or possession of the United States, or other jurisdiction; or

(2) to any person by reason of any agreement outstanding on December 2, 1942 made in accordance with a contract between the United States and any contractor therewith to pay benefits with respect to the death of any employee of such contractor occurring under circumstances not entitling such person to benefits under any workmen's compensation law or to pay benefits with respect to the failure of the United States or its contractor to furnish transportation upon the completion of the employment of any employee of such contractor to his home or to the place where he was employed; or

(3) to any person by reason of an agreement approved or authorized by the United States under which a contractor with the United States has agreed to pay workmen's compensation benefits or benefits in the nature of workmen's compensation benefits to an injured employee or his dependents on account of detention by a hostile force or person or on account of injury or death arising from a war-risk hazard;

such employer, carrier, or fund shall be entitled to be reimbursed for all benefits so paid or payable, including funeral and burial expenses, medical, hospital, or other similar costs for treatment and care; and reasonable and necessary claims expense in connection therewith. Claim for such reimbursement shall be filed with the Secretary under regulations promulgated by him, and such claims, or such part thereof as may be allowed by the Secretary, shall be paid from the compensation fund established under section 785 of Title 5. The Secretary may, under such regulations as he shall prescribe, pay such benefits, as they accrue and in lieu of reimbursement, directly to any person entitled thereto, and the insolvency of such employer, insurance carrier, or compensation fund shall not affect the right of the beneficiaries of such benefits to receive the compensation directly from the said compensation fund established under section 785 of Title 5. The Secretary may also, under such regulations as he shall prescribe, use any private facilities, or such Government facilities as may be available, for the treatment or care of any person entitled thereto.

(b) No reimbursement shall be made under this subchapter in any case in which the Secretary finds that the benefits paid or payable were on account of injury, detention, or death which arose from a war-risk hazard for which a premium (which included an additional charge or loading for such hazard) was charged.

(c) The provisions of this section shall not apply with respect to benefits on account of any injury or death occurring within any State. Dec. 2, 1942, c. 668, Title I, § 104, 56 Stat. 1031; 1946 Reorg. Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg.Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; Aug. 8, 1958, Pub.L. 85–608, Title I, § 104, 72 Stat. 537; June 25, 1959, Pub.L. 86–70, § 42(b), 73 Stat. 151.

Library references: Workmen's Compensation ⇐2188 et seq.; C.J.S. Workmen's Compensation § 992 et seq.

Historical Note

1959 Amendment. Subsec. (c). Pub.L. 86–70 added subsec. (c).

1958 Amendment. Subsec. (a) (3). Pub. L. 85–608 substituted "a hostile force or person" for "the enemy".

Effective Date of 1959 Amendment. Amendment of section by Pub.L. 86–70 effective June 25, 1959, see section 47(g) of Pub.L. 86–70, set out as a note under section 1651 of this title.

Effective Date of 1958 Amendment. Amendment of section by Pub.L. 85–608 effective June 30, 1958, see note set out under section 1651 of this title.

Effective Date. Section effective Dec. 7, 1941, see note under section 1701 of this title.

Transfer of Functions. In text of this section, "Secretary", referring to the Secretary of Labor, was substituted for "Administrator" by 1950 Reorg.Plan No. 19, set out as a note under section 778 of Title 5, Executive Departments and Government Officers and Employees.

United States Employees' Compensation Commission was abolished and its functions transferred to the Federal Security Administrator by 1946 Reorg.Plan No. 2, set out as a note under section 133y—16 of Title 5.

Legislative History: For legislative history and purpose of Pub.L. 85-608, see 1958 U.S.Code Cong. and Adm.News, p. 3321. See, also, Pub.L. 86-70, 1959 U.S. Code Cong. and Adm.News, p. 1675.

§ 1705. Receipt of workmen's compensation benefits

(a) No benefits shall be paid or furnished under the provisions of this subchapter for injury or death to any person who recovers or receives workmen's compensation benefits for the same injury or death under any other law of the United States, or under the law of any State, Territory, possession, foreign country, or other jurisdiction, or benefits in the nature of workmen's compensation benefits payable under an agreement approved or authorized by the United States pursuant to which a contractor with the United States has undertaken to provide such benefits.

(b) The Secretary shall have a lien and a right of recovery, to the extent of any payments made under this subchapter on account of injury or death, against any compensation payable under any other workmen's compensation law on account of the same injury or death; and any amounts recovered under this subsection shall be covered into the fund established under section 785 of Title 5.

(c) Where any person specified in section 1701(a) of this title, or the dependent, beneficiary, or allottee of such person, receives or claims wages, payments in lieu of wages, insurance benefits for disability or loss of life (other than workmen's compensation benefits), and the cost of such wages, payments, or benefits is provided in whole or in part by the United States, the amount of such wages, payments, or benefits shall be credited, in such manner as the Secretary shall determine, against any payments to which any such person is entitled under this subchapter.

Where any person specified in section 1701(a) of this title, or any dependent, beneficiary, or allottee of such person, or the legal representative or estate of any such entities, after having obtained benefits under this subchapter, seeks through any proceeding, claim, or otherwise, brought or maintained against the employer, the United States, or other person, to recover wages, payments in lieu of wages, or any sum claimed as for services rendered, or for failure to furnish transportation, or for liquidated or unliquidated damages under the employment contract, or any other benefit, and the right in respect thereto is alleged to have accrued during or as to any period of time in respect of which payments under this subchapter in such case have been made, and in like cases where a recovery is

made or allowed, the Secretary shall have the right of intervention and a lien and right of recovery to the extent of any payments paid and payable under this subchapter in such case, provided the cost of such wages, payments in lieu of wages, or other such right, may be directly or indirectly paid by the United States; and any amounts recovered under this subsection shall be covered into the fund established under section 785 of Title 5.

(d) Where a national of a foreign government is entitled to benefits on account of injury or death resulting from a war-risk hazard, under the laws of his native country or any other foreign country, the benefits of this subchapter shall not apply.

(e) If at the time a person sustains an injury coming within the purview of this subchapter said person is receiving workmen's compensation benefits on account of a prior accident or disease, said person shall not be entitled to any benefits under this subchapter during the period covered by such workmen's compensation benefits unless the injury from a war-risk hazard increases his disability, and then only to the extent such disability has been so increased. Dec. 2, 1942, c. 668, Title I, § 105, 56 Stat. 1032; Dec. 23, 1943, c. 380, Title I, 57 Stat. 627; 1946 Reorg.Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg.Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271.

Historical Note

1943 Amendment. Subsec. (c). Act Dec. 23, 1943 added second paragraph.

Effective Date of 1943 Amendment. Act Dec. 23, 1943, provided that: "The amendment * * * [to subsec. (c)] shall become effective as of the effective date of title I of such Act of December 2, 1942 [sections 1701–1706 of this title]".

Effective Date. Section effective Dec. 7, 1941, see note under section 1701 of this title.

Transfer of Functions. In text of this section, "Secretary", referring to the Secretary of Labor, was substituted for "Administrator" by 1950 Reorg.Plan No. 19, set out as a note under section 778 of Title 5, Executive Departments and Government Officers and Employees.

"Administrator" was substituted for "Commission" by 1946 Reorg.Plan No. 2, set out as a note under section 133y—16 of Title 5.

Notes of Decisions

Library references

Workmen's Compensation ⇐58.
C.J.S. Workmen's Compensation §§ 21, 917.

1. Lien for payments

The United States, which had made payments to seamen or their representatives pursuant to Second Seaman's Life, Injuries and Effects policies issued by the United States, had a lien for such amounts on awards made to such seamen or the representatives in libels against owner and operator of vessel. Petition of Panama Transp. Co., D.C.N.Y.1952, 102 F.Supp. 721.

§ 1706. Administration

(a) The provisions of this subchapter shall be administered by the Secretary of Labor, and the Secretary is authorized to make rules and regulations for the administration thereof and to contract with

insurance carriers for the use of the service facilities of such carriers for the purpose of facilitating administration.

(b) In administering the provisions of this subchapter the Secretary may enter into agreements or cooperative working arrangements with other agencies of the United States or of any State (including the District of Columbia, Hawaii, Alaska, Puerto Rico, and the Virgin Islands) or political subdivision thereof, and with other public agencies and private persons, agencies, or institutions, within and outside the United States, to utilize their services and facilities and to compensate them for such use. The Secretary may delegate to any officer or employee, or to any agency, of the United States or of any State, or of any political subdivision thereof, or Territory or possession of the United States, such of his powers and duties as he finds necessary for carrying out the purposes of this subchapter.

(c) The Secretary, in his discretion, may waive the limitation provisions of sections 751–756, 757–781, 783–791 and 793 of Title 5 with respect to notice of injury and filing of claims under this subchapter, whenever the Secretary shall find that, because of circumstances beyond the control of an injured person or his beneficiary, compliance with such provisions could not have been accomplished within the time therein specified. Dec. 2, 1942, c. 668, Title I, § 106, 56 Stat. 1033; 1946 Reorg.Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg.Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271.

Library references: Workmen's Compensation ⇐1076 et seq.; C.J.S. Workmen's Compensation § 378.

Historical Note

Effective Date. Section effective Dec. 7, 1941, see note under section 1701 of this title.

Transfer of Functions. In text of this section, "Secretary of Labor" was substituted for "Federal Security Administrator", "Secretary" was substituted for "Administrater" by 1950 Reorg.Plan No. 19, set out as a note under section 778 of Title 5, Executive Departments and Government Officers and Employees.

United States Employees' Compensation Commission was abolished and its functions transferred to the Federal Security Administrator by 1946 Reorg.Plan No. 2, set out as a note under section 133y—16 of Title 5.

Admission of Alaska and Hawaii to Statehood. Alaska was admitted into the Union on Jan. 3, 1959 upon the issuance of Proc.No. 3269, Jan. 5, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959 upon the issuance of Proc.No. 3309, Aug. 25, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub.L. 85-508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub.L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

SUBCHAPTER II.—MISCELLANEOUS PROVISIONS

§ 1711. Definitions

When used in this chapter—

(a) The term "Secretary" means the Secretary of Labor.

(b) The term "war-risk hazard" means any hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring within any country in which a person covered by this chapter is serving; from—

(1) the discharge of any missile (including liquids and gas) or the use of any weapon, explosive, or other noxious thing by a hostile force or person or in combating an attack or an imagined attack by a hostile force or person; or

(2) action of a hostile force or person, including rebellion or insurrection against the United States or any of its Allies; or

(3) the discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or person as defined herein (except with respect to employees of a manufacturer, processor, or transporter of munitions during the manufacture, processing, or transporting thereof, or while stored on the premises of the manufacturer, processor, or transporter); or

(4) the collision of vessels in convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(5) the operation of vessels or aircraft in a zone of hostilities or engaged in war activities.

(c) The term "hostile force or person" means any nation, any subject of a foreign nation, or any other person serving a foreign nation (1) engaged in a war against the United States or any of its allies, (2) engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies, or (3) engaged in a war or armed conflict between military forces of any origin in any country in which a person covered by this chapter is serving.

(d) The term "allies" means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance.

(e) The term "war activities" includes activities directly relating to military operations.

(f) The term "continental United States" means the States and the District of Columbia. Dec. 2, 1942, c. 668, Title II, § 201, 56 Stat.

1033; 1946 Reorg.Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg.Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; June 30, 1953, c. 176, § 1, 67 Stat. 134; June 30, 1954, c. 431, § 1, 68 Stat. 336; June 30, 1955, c. 257, § 1, 69 Stat. 241; July 9, 1956, c. 537, § 1, 70 Stat. 519; June 29, 1957, Pub.L. 85–70, 71 Stat. 242; Aug. 8, 1958, Pub.L. 85–608, Title I, §§ 103, 104, 72 Stat. 536; June 25, 1959, Pub.L. 86–70, § 42(c), 73 Stat. 151.

Historical Note

Codification. In the original of Act Dec. 2, 1942, § 201, the opening clause read "When used in this Act (except when used in title III) ——". Title III of such Act amended section 1651 of this title which is not in this chapter. Therefore, because of the use of the restrictive term "this chapter", in this section, the words in parenthesis "except when used in title III" were omitted as unnecessary. This chapter comprises the remainder of such Act.

1959 Amendment. Subsec. (f). Pub.L. 86–70 added subsec. (f).

1958 Amendment. Subsec. (b). Pub.L. 85–608, § 103(a), omitted provisions which defined the term "war-risk hazard" to mean hazards arising after December 6, 1941, and prior to July 1, 1958, and inserted provisions redefining the term to include hazards arising during a war or an armed conflict in which the United States is engaged, and hazards arising during a war or armed conflict between military forces of any origin, occurring within any country in which a person covered by this chapter is serving.

Subsec. (b) (1). Pub.L. 85–608, § 104, substituted "a hostile force or person" for "an enemy" in two instances.

Subsec. (b) (2). Pub.L. 85–608, § 104, substituted "a hostile force or person" for "the enemy".

Subsec. (b) (3). Pub.L. 85–608, § 103 (b), substituted "a war or armed conflict with a hostile force or person as defined herein" for "the national war effort", and excepted employees of transporters of munitions during the transportation thereof or while the munitions are stored on the premises of the transporter.

Subsec. (c). Pub.L. 85–608, § 103(c), substituted provisions defining "hostile force or person" for provisions which defined the term "enemy" to mean any nation, government, or force engaged in armed conflict with the Armed Forces of the United States or of any of its allies.

Subsec. (d). Pub.L. 85–608, § 103(d), substituted provisions redefining the term "allies" to mean any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance for provisions which defined the term as meaning any nation, government, or force participating with the United States in any armed conflict.

Subsec. (e). Pub.L. 85–608, § 103(e), substituted "war activities" for "national war effort" and "war effort".

Subsec. (f). Pub.L. 85–608, § 103(e), repealed subsec. (f), which defined "war activities", is now covered by subsec. (e) of this section.

1957 Amendment. Subsec. (b). Pub.L. 85–70 substituted "July 1, 1958" for "July 1, 1957".

1956 Amendment. Subsec. (b). Act July 9, 1956, substituted "July 1, 1957" for "July 1, 1956".

1955 Amendment. Subsec. (b). Act June 30, 1955, substituted "July 1, 1956" for "July 1, 1955".

1954 Amendment. Subsec. (b). Act June 30, 1954, substituted "July 1, 1955" for "July 1, 1954".

1953 Amendment. Subsec. (b). Act June 30, 1953, § 1(a), substituted "July 1, 1954" for "the end of the present war".

Subsecs. (c)–(f). Act June 30, 1953, § 1(b), added subsecs. (c)–(f).

Effective Date of 1959 Amendment. Amendment of section by Pub.L. 86–70 effective June 25, 1959, see section 47(g) of Pub.L. 86–70, set out as a note under section 1651 of this title.

Effective Date of 1958 Amendment. Amendment of section by Pub.L. 85–608 effective June 30, 1958, see note set out under section 1651 of this title.

Transfer of Functions. In par. (a), "Secretary" was substituted for "Administrator", and "Secretary of Labor" was substituted for "Federal Security Administrator", by 1950 Reorg.Plan No. 19, set out as a note under section 778 of

Title 5, Executive Departments and Government Officers and Employees.

"Administrator" was substituted for "Commission", and "Federal Security Administrator" was substituted for "United States Employees' Compensation Commission" by 1946 Reorg.Plan No. 2, set out as a note under section 133y—16 of Title 5.

Legislative History: For legislative history and purpose of Act June 30, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 1783. See, also, Act June 30, 1954, 1954 U.S.Code Cong. and Adm.News, p. 2400; Act June 30, 1955, 1955 U.S.Code Cong. and Adm.News, p. 2300; Act July 9, 1956, 1956 U.S.Code Cong. and Adm.News, p. 3076; Pub.L. 85–70, 1957 U.S.Code Cong. and Adm.News, p. 1274; Pub.L. 85–608, 1958 U.S.Code Cong. and Adm.News, p. 3321; Pub.L. 86–70, 1959 U.S.Code Cong. and Adm.News, p. 1675.

Notes of Decisions

1. War-risk hazard

A mere causal connection between a state of war and the movement of a cargo vessel is not sufficient to bring such vessel within war risk policy covering consequences of "hostilities or warlike operations", but the peril must be due directly to some hostile action, if it be considered a warlike risk, and the warlike quality must be a primary or principal characteristic of the operation. Esso Standard Oil Co. v. U. S., D.C.N.Y. 1954, 122 F.Supp. 109, affirmed 221 F.2d 805.

§ 1712. Disqualification from benefits

No person convicted in a court of competent jurisdiction of any subversive act against the United States or any of its Allies, committed after the declaration by the President on May 27, 1941, of the national emergency, shall be entitled to compensation or other benefits under subchapter I of this chapter, nor shall any compensation be payable with respect to his death or detention under said subchapter, and upon indictment or the filing of an information charging the commission of any such subversive act, all such compensation or other benefits shall be suspended and remain suspended until acquittal or withdrawal of such charge, but upon conviction thereof or upon death occurring prior to a final disposition thereof, all such payments and all benefits under said subchapter shall be forfeited and terminated. If the charge is withdrawn, or there is an acquittal, all such compensation withheld shall be paid to the person or persons entitled thereto. Dec. 2, 1942, c. 668, Title II, § 202, 56 Stat. 1034.

Historical Note

National Emergency Declared on May 27, 1941. The national emergency declared by the President on May 27, 1941, by Proc.No. 2487, 6 F.R. 2617, 55 Stat. 1647, was terminated April 28, 1952 by Proc.No. 2974, Apr. 30, 1952, 17 F.R. 3813, 66 Stat. c. 31, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

§ 1713. Fraud; penalties

Whoever, for the purpose of causing an increase in any payment authorized to be made under this chapter, or for the purpose of causing any payment to be made where no payment is authorized hereunder, shall knowingly make or cause to be made, or aid or

abet in the making of any false statement or representation of a material fact in any application for any payment under subchapter I of this chapter, or knowingly make or cause to be made, or aid or abet in the making of any false statement, representation, affidavit, or document in connection with such an application, or claim, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both. Dec. 2, 1942, c. 668, Title II, § 203, 56 Stat. 1034.

Library references: Fraud ⇐68, 69; C.J.S. Fraud §§ 154, 155 et seq.

Cross References

Offenses classified, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 1714. Legal services

No claim for legal services or for any other services rendered in respect of a claim or award for compensation under subchapter I of this chapter to or on account of any person shall be valid unless approved by the Secretary; and any claim so approved shall, in the manner and to the extent fixed by the said Secretary, be paid out of the compensation payable to the claimant; and any person who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is so approved, or who solicits employment for another person or for himself in respect of any claim or award for compensation under said subchapter shall be guilty of a misdemeanor and upon conviction thereof shall, for each offense, be fined not more than $1,000 or imprisoned not more than one year, or both. Dec. 2, 1942, c. 668, Title II, § 204, 56 Stat. 1034; 1946 Reorg.Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg. Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271.

Historical Note

Transfer of Functions. In text of this section "Secretary" was substituted for "Administrator" by 1950 Reorg.Plan No. 19, set out as a note under section 778 of Title 5, Executive Departments and Government Officers and Employees.

United States Employees' Compensation Commission was abolished and its functions transferred to the Federal Security Administrator by 1946 Reorg. Plan No. 2, set out as a note under section 133y—16 of Title 5.

Cross References

Offenses classified, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 1715. Finality of Secretary's decisions

The action of the Secretary in allowing or denying any payment under subchapter I of this chapter shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General is authorized and directed to

allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action. Dec. 2, 1942, c. 668, Title II, § 205, 56 Stat. 1034; 1946 Reorg.Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg.Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271.

Historical Note

Transfer of Functions. In text of this section, "Secretary" was substituted for "Administrator" by 1950 Reorg.Plan No. 19, set out as a note under section 778 of Title 5, Executive Departments and Government Officers and Employees.

United States Employees' Compensation Commission was abolished and its functions transferred to the Federal Security Administrator by 1946 Reorg.Plan No. 2, set out as a note under section 133y—16 of Title 5.

§ 1716. Presumption of death or detention

A determination that an individual is dead or a determination that he has been detained by a hostile force or person may be made on the basis of evidence that he has disappeared under circumstances such as to make such death or detention appear probable. Dec. 2, 1942, c. 668, Title II, § 206, 56 Stat. 1034; Aug. 8, 1958, Pub.L. 85–608, Title I, § 104, 72 Stat. 537.

Library references: Death ⇨2(1); C.J.S. Death § 6 et seq.

Historical Note

1958 Amendment. Pub.L. 85–608 substituted "a hostile force or person" for "the enemy".

Effective Date of 1958 Amendment. Amendment of section by Pub.L. 85–608 effective June 30, 1958, see note set out under section 1651 of this title.

Legislative History: For legislative history and purpose of Pub.L. 85–608, see 1958 U.S.Code Cong. and Adm.News, p. 3321.

§ 1717. Assignment of benefits; execution, levy, etc., against benefits

The right of any person to any benefit under subchapter I of this chapter shall not be transferable or assignable at law or in equity except to the United States, and none of the moneys paid or payable (except money paid hereunder as reimbursement for funeral expenses or as reimbursement with respect to payments of workmen's compensation or in the nature of workmen's compensation benefits), or rights existing under said subchapter, shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law. Dec. 2, 1942, c. 668, Title II, § 207, 56 Stat. 1035.

Library references: Assignments ⇨36; C.J.S. Assignments § 47.

CHAPTER 13.—SCHOOL LUNCH PROGRAMS

§ 1751. Congressional declaration of policy

It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school-lunch programs. June 4, 1946, c. 281, § 2, 60 Stat. 230.

Library references: Health ⇐20; United States ⇐82; C.J.S. Health §§ 2, 9 et seq.; C.J.S. United States § 122.

Historical Note

Short Title. Congress in enacting this chapter provided by section 1 of Act June 4, 1946, that it should be popularly known as the "National School Lunch Act".

§ 1752. Appropriations

For each fiscal year there is authorized to be appropriated, out of money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Secretary of Agriculture (hereinafter referred to as the "Secretary") to carry out the provisions of this chapter, other than section 1759a of this title. June 4, 1946, c. 281, § 3, 60 Stat. 230; Oct. 15, 1962, Pub.L. 87–823, § 1, 76 Stat. 944.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

1962 Amendment. Pub.L. 87–823 deleted ", beginning with the fiscal year ending June 30, 1947," following "fiscal year" and added the phrase ", other than section 1759a of this title."

Legislative History: For legislative history and purpose of Pub.L. 87–823, see 1962 U.S.Code Cong. and Adm.News, p. 3244.

§ 1753. Apportionments to States; definition

The sums appropriated for any fiscal year pursuant to the authorization contained in section 1752 of this title, excluding the sum specified in section 1754 of this title, shall be available to the Secretary for supplying agricultural commodities and other foods for the program in accordance with the provisions of this chapter. The Secretary shall apportion among the States during each fiscal year not less than 75 per centum of the funds made available for such year for supplying agricultural commodities and other foods under the provisions of section 1752 of this title. Apportionment among the States shall be made on the basis of two factors: (1) the participation rate for the State, and (2) the assistance need rate for the State. The amount of apportionment to any State shall be determined by the following method: First, determine an index for the State by multiplying factors (1) and (2); second, divide this index by the sum of the indices for all the States (exclusive of American Samoa for periods ending before July 1, 1967); and third, apply the figure thus obtained to the total funds to be apportioned. If any State cannot utilize all funds so apportioned to it, or if additional funds are made available under section 1752 of this title for apportionment among the States, the Secretary shall make further apportionments to the remaining States in the same manner. Notwithstanding the foregoing provisions of this section, (1) for the fiscal year beginning July 1, 1962, three-quarters of any funds available for apportionment among the States shall be apportioned in the manner used prior to such fiscal year, and one-quarter of any such funds shall be apportioned in accordance with the foregoing sentences of

this section, (2) for the fiscal year beginning July 1, 1963, one-half of any funds available for apportionment among the States shall be apportioned in the manner used prior to the fiscal year beginning July 1, 1962, and one-half of any such funds shall be apportioned in accordance with the foregoing sentences of this section, (3) for the fiscal year beginning July 1, 1964, one-quarter of any funds available for apportionment among the States shall be apportioned in the manner used prior to the fiscal year beginning July 1, 1962, and three-quarters of any such funds shall be apportioned in accordance with the foregoing sentences of this section, and (4) for the five fiscal years in the period beginning July 1, 1962, and ending June 30, 1967, the amount apportioned to American Samoa shall be $25,000 each year, which amount shall be first deducted from the funds available for apportionment in determining the amounts to be apportioned to the other States. June 4, 1946, c. 281, § 4, 60 Stat. 230; July 12, 1952, c. 699, § 1(a), 66 Stat. 591; Sept. 25, 1962, Pub.L. 87–688, § 3(a), 76 Stat. 587; Oct. 15, 1962, Pub.L. 87–823, § 2, 76 Stat. 944.

Historical Note

1962 Amendments. Pub.L. 87–823 amended section generally, and, among other changes, substituted as factors for apportionment of funds among the States "(1) the participation rate for the State, and (2) the assistance need rate for the State" for "(1) the number of school children in the State and (2) the need for assistance in the State as indicated by the relation of the per capita income of the United States to the per capita income in the State"; inserted, in the provision for determination of amount of apportionment in clause designated "second", "(exclusive of American Samoa for periods ending before July 1, 1967)"; added provisions for use of transitional formulas in apportionment of funds for fiscal years beginning in 1962, 1963 and 1964 and apportioning to American Samoa $25,000 annually for five fiscal years in period beginning July 1, 1962 and ending June 30, 1967; and omitted the apportionment formula for Puerto Rico, Guam, American Samoa, and the Virgin Islands, which limited apportionments to 3 per centum of the total fund to be apportioned but required the apportionment to each to be not less than an amount which would result in an allotment per child of school age equal to that for the State with the lowest per capita income, the definition of school (incorporated in section 1760(d) (7) of this title), the provision for use of latest per capita income figures certified by the Department of Commerce (incorporated in section 1760 (d) (6) (ii) of this title), and the definition of school children, which provided that the number of school children should be the number between the ages of five and seventeen.

Pub.L. 87-688 inserted "American Samoa," following "Guam," in two instances and "the apportionment for American Samoa," following "the apportionment for Guam,".

1952 Amendment. Act July 12, 1952, removed Alaska and Hawaii from the 3 per cent limitation imposed on Puerto Rico and the Virgin Islands, made the limitation applicable to Guam, and modified the effects of the 3 per cent limitation.

Effective Date of 1962 Amendment. Section 3(b) of Pub.L. 87–688 provided that: "The amendments made by this section [to this section and sections 1754 and 1760(d) (1) of this title] shall be applicable only with respect to funds appropriated after the date of enactment of this Act [Sept. 25, 1962]."

Effective Date of 1952 Amendment. Section 1(d) of Act July 12, 1952, provided that amendments made by section 1(a)–(c) of Act July 12, 1952, shall be effective only with respect to funds appropriated after July 12, 1952.

Legislative History: For legislative history and purpose of Act July 12, 1952, see 1952 U.S.Code Cong. and Adm.News, p. 2109. See, also, Pub.L. 87–68, 1962, U.S.Code Cong. and Adm.News, p. 2622; Pub.L. 87–823, 1962 U.S.Code Cong. and Adm.News, p. 3244.

§ 1754. Nonfood assistance; amount; apportionment

Of the sums appropriated for any fiscal year pursuant to the authorization contained in section 1752 of this title, $10,000,000 shall be available to the Secretary for the purpose of providing, during such fiscal year, nonfood assistance for the school-lunch program pursuant to the provisions of this chapter. The Secretary shall apportion among the States during each fiscal year the aforesaid sum of $10,000,000, and such apportionment among the States shall be on the basis of the factors, and in accordance with the standards, set forth in section 1753 of this title with respect to the apportionment for agricultural commodities and other foods. June 4, 1946, c. 281, § 5, 60 Stat. 231; July 12, 1952, c. 699, § 1(b), 66 Stat. 591; Sept. 25, 1962, Pub.L. 87–688, § 3(a), 76 Stat. 587; Oct. 15, 1962, Pub.L. 87–823, § 3(a), 76 Stat. 945.

Historical Note

1962 Amendments. Pub.L. 87–823 deleted the last sentence reading: "Apportionment of funds for use in Puerto Rico, Guam, and the Virgin Islands for nonfood assistance shall be determined subject to the provisions of the third sentence of section 1753 of this title."

Pub.L. 87–688 inserted "American Samoa," following "Guam,".

1952 Amendment. Act July 12, 1952 made the method of apportioning funds for nonfood assistance follow the method of apportioning funds for agricultural commodities and other foods as set out in section 1753 of this title.

Effective Date of 1962 Amendment. Amendment of this section by Pub.L. 87–688 applicable only with respect to funds appropriated after Sept. 25, 1962, see section 3(b) of Pub.L. 87–688, set out as a note under section 1753 of this title.

Effective Date of 1952 Amendment. Amendment by Act July 12, 1952, effective only with respect to funds appropriated after July 12, 1952, see note set out under section 1753 of this title.

Legislative History: For legislative history and purpose of Pub.L. 87–688, see 1962 U.S.Code Cong. and Adm.News, p. 2622.

§ 1755. Direct expenditures for agricultural commodities and other foods

The funds appropriated for any fiscal year for carrying out the provisions of this chapter, less not to exceed 3½ per centum thereof made available to the Secretary for his administrative expenses, less the amount apportioned by him pursuant to sections 1753, 1754, and 1759 of this title, and less the amount appropriated pursuant to section 1759a of this title, shall be available to the Secretary during such year for direct expenditure by him for agricultural commodities and other foods to be distributed among the States and schools participating in the school-lunch program under this chapter in accordance with the needs as determined by the local school authorities. The provisions of law contained in the proviso of section 713c of Title 15, facilitating operations with respect to the purchase and disposition of surplus agricultural commodities under section 612c of Title 7, shall, to the extent not inconsistent with the provisions of this chapter, also be applicable to expenditures of funds

by the Secretary under this chapter. June 4, 1946, c. 281, § 6, 60 Stat. 231; Oct. 15, 1962, Pub.L. 87–823, § 3(b), 76 Stat. 945.

Historical Note

References in Text. Section 713c of Title 15, referred to in the text, which related to the continuance of the existence of Federal Surplus Commodities Corporation and the purchase and distribution of surplus agricultural commodities, expired by its own terms on June 30, 1945.

1962 Amendment. Pub.L. 87–823 substituted ", less the amount apportioned by him pursuant to sections 1753, 1754, and 1759 of this title, and less the amount appropriated pursuant to section 1759a of this title" for "and less the amount apportioned to him pursuant to sections 1753, 1754, and 1759 of this title."

Legislative History: For legislative history and purpose of Pub.L. 87–823, see 1962 U.S.Code Cong. and Adm.News, p. 3244.

Cross References

Utilization of services and facilities of Commodity Credit Corporation in carrying out program under this section, see section 1424 of Title 7, Agriculture.

§ 1756. Payments to States; matching payments by States

Funds apportioned to any State pursuant to sections 1753 or 1754 of this title during any fiscal year shall be available for payment to such State for disbursement by the State educational agency, in accordance with such agreements not inconsistent with the provisions of this chapter, as may be entered into by the Secretary and such State educational agency, for the purpose of assisting schools of that State during such fiscal year, in supplying (1) agricultural commodities and other foods for consumption by children and (2) nonfood assistance in furtherance of the school-lunch program authorized under this chapter. Such payments to any State in any fiscal year during the period 1947 to 1950, inclusive, shall be made upon condition that each dollar thereof will be matched during such year by $1 from sources within the State determined by the Secretary to have been expended in connection with the school-lunch program under this chapter. Such payments in any fiscal year during the period 1951 to 1955, inclusive, shall be made upon condition that each dollar thereof will be so matched by one and one-half dollars; and for any fiscal year thereafter, such payments shall be made upon condition that each dollar will be so matched by $3. In the case of any State whose per capita income is less than the per capita income of the United States, the matching required for any fiscal year shall be decreased by the percentage which the State per capita income is below the per capita income of the United States. For the purpose of determining whether the matching requirements of this section and section 1759 of this title, respectively, have been met, the reasonable value of donated services, supplies, facilities, and equipment as certified, respectively, by the State educational agency and in case of schools receiving funds pursuant to section 1759 of this title, by such schools (but not the cost or value of land, of the acquisition, construction, or alteration of buildings of commodities

donated by the Secretary, or of Federal contributions), may be regarded as funds from sources within the State expended in connection with the school-lunch program. The Secretary shall certify to the Secretary of the Treasury from time to time the amounts to be paid to any State under this section and the time or times such amounts are to be paid; and the Secretary of the Treasury shall pay to the State at the time or times fixed by the Secretary the amounts so certified. June 4, 1946, c. 281, § 7, 60 Stat. 232.

§ 1757. State disbursement to schools; purpose; food costs; limitation

Funds paid to any State during any fiscal year pursuant to sections 1753 or 1754 of this title shall be disbursed by the State educational agency, in accordance with such agreements approved by the Secretary as may be entered into by such State agency and the schools in the State, to those schools in the State which the State educational agency, taking into account need and attendance, determines are eligible to participate in the school-lunch program. Such disbursement to any school shall be made only for the purpose of reimbursing it for the cost of obtaining agricultural commodities and other foods for consumption by children in the school-lunch program and nonfood assistance in connection with such program. Such food costs may include, in addition to the purchase price of agricultural commodities and other foods, the cost of processing, distributing, transporting, storing, or handling thereof. In no event shall such disbursement for food to any school for any fiscal year exceed an amount determined by multiplying the number of lunches served in the school in the school-lunch program under this chapter during such year by the maximum Federal food-cost contribution rate for the State, for the type of lunch served, as prescribed by the Secretary. June 4, 1946, c. 281, § 8, 60 Stat. 232.

§ 1758. Nutritional and other program requirements; donation of agricultural commodities

Lunches served by schools participating in the school-lunch program under this chapter shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research. Such meals shall be served without cost or at a reduced cost to children who are determined by local school authorities to be unable to pay the full cost of the lunch. No physical segregation of or other discrimination against any child shall be made by the school because of his inability to pay. School-lunch programs under this chapter shall be operated on a nonprofit basis. Each school shall, insofar as practicable, utilize in its lunch program commodities designated from time to time by the Secretary as being in abund-

ance, either nationally or in the school area, or commodities donated by the Secretary. Commodities purchased under the authority of section 612c of Title 7, may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in the school-lunch program under this chapter as well as to other schools carrying out nonprofit school-lunch programs and institutions authorized to receive such commodities. June 4, 1946, c. 281, § 9, 60 Stat. 233.

§ 1759. Disbursement to nonprofit private schools; conditions

If, in any State, the State educational agency is not permitted by law to disburse the funds paid to it under this chapter to nonprofit private schools in the State, or is not permitted by law to match Federal funds made available for use by such nonprofit private schools, the Secretary shall withhold from the funds apportioned to any such State under sections 1753 and 1754 of this title an amount which bears the same ratio to such funds as the number of lunches, consisting of a combination of foods and meeting the minimum requirements prescribed by the Secretary pursuant to section 1758 of this title, served in the preceding fiscal year by all nonprofit private schools participating in the program under this chapter within the State, as determined by the Secretary, bears to the participation rate for the State. The Secretary shall disburse the funds so withheld directly to the nonprofit private schools within said State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to schools within the State by the State educational agency, including the requirement that any such payment or payments shall be matched, in the proportion specified in section 1756 of this title for such State, by funds from sources within the State expended by nonprofit private schools within the State participating in the school-lunch program under this chapter. Such funds shall not be considered a part of the funds constituting the matching funds under the terms of section 1756 of this title. June 4, 1946, c. 281, § 10, 60 Stat. 233; Oct. 15, 1962, Pub.L. 87–823, § 4, 76 Stat. 945.

Library references: United States ⇨82; C.J.S. United States § 122.

Historical Note

1962 Amendment. Pub.L. 87–823 substituted "an amount which bears the same ratio to such funds as the number of lunches, consisting of a combination of foods and meeting the minimum requirements prescribed by the Secretary pursuant to section 1758 of this title, served in the preceding fiscal year by all nonprofit private schools participating in the program under this chapter within the State, as determined by the Secretary, bears to the participation rate for the State" for "the same proportion of the funds as the number of children between the ages of 5 and 17, inclusive, attending nonprofit private schools within the State, is of the total number of persons of those ages within the State attending school."

Legislative History: For legislative history and purpose of Pub.L. 87–823, see 1962 U.S.Code Cong. and Adm.News, p. 3244.

§ 1759a. Special assistance—Appropriations

(a) There is authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1963, and such sums as may be necessary for each succeeding fiscal year to provide special assistance to schools drawing attendance from areas in which poor economic conditions exist, for the purpose of helping such schools to meet the requirement of section 1758 of this title concerning the service of lunches to children unable to pay the full cost of such lunches.

Formula for apportionment of funds; need for additional funds

(b) Of the sums appropriated pursuant to this section for any fiscal year, 3 per centum shall be available for apportionment to Puerto Rico, the Virgin Islands, Guam, and American Samoa. From the funds so available the Secretary shall apportion to each such State an amount which bears the same ratio to the total of such funds as the number of free or reduced-price lunches served in accordance with section 1758 of this title in such State in the preceding fiscal year bears to the total number of such free or reduced-price lunches served in all such States in the preceding fiscal year: *Provided,* That for the fiscal year ending June 30, 1963, $5,000 shall be apportioned to American Samoa, which amount shall be first deducted from the total amount available for apportionment under this subsection. If any such State cannot utilize for the purposes of this section all of the funds apportioned to it, the Secretary shall make further apportionment on the same basis as the initial apportionment to any such States which justify the need for additional funds for such purposes.

Basis for apportionment among States; need for additional funds

(c) Of the remaining sums appropriated pursuant to this section for any fiscal year, not less than 50 per centum shall be apportioned among States, other than Puerto Rico, the Virgin Islands, Guam, and American Samoa, on the basis of the following factors for each State: (1) the number of free or reduced-price lunches served in accordance with section 1758 of this title in the preceding fiscal year, and (2) the assistance need rate. These factors shall be applied in the following manner: First, determine an index for each State by multiplying factors (1) and (2); second, divide this index by the sum of the indices for all such States; and, third, apply the figure thus obtained to the total funds to be apportioned. Any funds so initially apportioned which cannot be used for the purpose of this section by the State to which apportioned, together with the remainder of the funds available under this subsection, shall be further apportioned by the Secretary on the same basis as the initial apportionment to such States which justify on the basis of operating experience the need for additional funds to meet the need of students in such States for free or reduced-price lunches in schools deemed

eligible by their State educational agencies for special assistance in accordance with the factors set forth in subsection (e) of this section.

Payments to States

(d) Payment of the funds apportioned to any State under this section shall be made as provided in the last sentence of section 1756 of this title.

State disbursement to schools for purchase of agricultural commodities and other foods; basis for determination; selection of schools and amount of funds

(e) Funds paid to any State during any fiscal year pursuant to this section shall be disbursed to selected schools in such State to assist such schools in the purchase of agricultural commodities and other foods. The selection of schools and the amounts of funds that each shall from time to time receive (within a maximum per lunch amount established by the Secretary for all the States) shall be determined by the State educational agency on the basis of the following factors: (1) The economic condition of the area from which such schools draw attendance; (2) the needs of pupils in such schools for free or reduced-price lunches; (3) the percentages of free and reduced-price lunches being served in such schools to their pupils; (4) the prevailing price of lunches in such schools as compared with the average prevailing price of lunches served in the State under this chapter; and (5) the need of such schools for additional assistance as reflected by the financial position of the school lunch programs in such schools.

Withholding of funds from State educational agencies not permitted to disburse funds to nonprofit private schools; direct disbursement to nonprofit private schools, conditions

(f) If in any State the State educational agency is not permitted by law to disburse funds paid to it under this chapter to nonprofit private schools in the State, the Secretary shall withhold from the funds apportioned to such State under subsections (b) or (c) of this section an amount which bears the same ratio to such funds as the number of free and reduced-price lunches served in accordance with section 1758 of this title in the preceding fiscal year by all nonprofit private schools participating in the program under this chapter in such State bears to the number of such free and reduced-price lunches served during such year by all schools participating in the program under this chapter in such State. The Secretary shall disburse the funds so withheld directly to the nonprofit private schools within such State for the same purposes and subject to the same conditions as are applicable to a State educational agency disbursing funds under this section.

Terms and conditions

(g) In carrying out this section, the terms and conditions governing the operation of the school lunch program set forth in other

sections of this chapter, including those applicable to funds apportioned or paid pursuant to sections 1753 or 1754 of this title but excluding the provisions of section 1756 of this title relating to matching, shall be applicable to the extent they are not inconsistent with the express requirements of this section. June 4, 1946, c. 281, § 11, as added Oct. 15, 1962, Pub.L. 87–823, § 6, 76 Stat. 946.

Library references: United States ⇐85; C.J.S. United States § 123.

§ 1760. State accounts and records; inspection and audit; period of retention; definition

(a) States, State educational agencies, and schools participating in the school-lunch program under this chapter shall keep such accounts and records as may be necessary to enable the Secretary to determine whether the provisions of this chapter are being complied with. Such accounts and records shall at all times be available for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines is necessary.

(b) The Secretary shall incorporate, in his agreements with the State educational agencies, the express requirements under this chapter with respect to the operation of the school-lunch program under this chapter insofar as they may be applicable and such other provisions as in his opinion are reasonably necessary or appropriate to effectuate the purposes of this chapter.

(c) In carrying out the provisions of this chapter, neither the Secretary nor the State shall impose any requirement with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction in any school.

(d) For the purposes of this chapter—

(1) "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(2) "State educational agency" means, as the State legislature may determine, (A) the chief State school officer (such as the State superintendent of public instruction, commissioner of education, or similar officer), or (B) a board of education controlling the State department of education.

(3) "Nonprofit private school" means any private school exempt from income tax under section 501(c) (3) of Title 26.

(4) "Nonfood assistance" means equipment used by schools in storing, preparing, or serving food for schoolchildren.

(5) "Participation rate" for a State means a number equal to the number of lunches, consisting of a combination of foods and meeting the minimum requirements prescribed by the Secretary pursuant to section 1758 of this title, served in the preceding

fiscal year by schools participating in the program under this chapter in the State, as determined by the Secretary.

(6) "Assistance need rate" (A) in the case of any State having an average annual per capita income equal to or greater than the average annual per capita income for all the States, shall be 5; and (B) in the case of any State having an average annual per capita income less than the average annual per capita income for all the States, shall be the product of 5 and the quotient obtained by dividing the average annual per capita income for all the States by the average annual per capita income for such State, except that such product may not exceed 9 for any such State. For the purposes of this paragraph (i) the average annual per capita income for any State and for all the States shall be determined by the Secretary on the basis of the average annual per capita income for each State and for all the States for the three most recent years for which such data are available and certified to the Secretary by the Department of Commerce; and (ii) the average annual per capita income for American Samoa shall be disregarded in determining the average annual per capita income for all the States for periods ending before July 1, 1967.

(7) "School" means any public or nonprofit private school of high school grade or under and, with respect to Puerto Rico, shall also include nonprofit child-care centers certified as such by the Governor of Puerto Rico.

June 4, 1946, c. 281, § 12, formerly § 11, 60 Stat. 233; July 12, 1952, c. 699, § 1(c), 66 Stat. 591; Sept. 25, 1962, Pub.L. 87–688, § 3(a), 76 Stat. 587, renumbered and amended Oct. 15, 1962, Pub.L. 87–823, § 5, 76 Stat. 945.

Historical Note

References in Text. Section 101(6) of Title 26, referred to in subsec. (d) (3), which was a reference to section 101(6) of the Internal Revenue Code, 1939, was repealed by section 7851 of Title 26, I.R.C. 1954, and is now covered by section 501 (c) (3) of said Title 26. For provision deeming a reference in other laws to a provision of I.R.C.1939, also as a reference to corresponding provision of I.R.C. 1954, see section 7852(b) of said Title 26.

1962 Amendments. Subsec. (c). Pub.L. 87-823 omitted requirement of just and equitable distribution of funds in States maintaining separate schools for minority and majority races.

Subsec. (d). Pub.L. 87-823 redefined the term "State" in par. (1) to recognize Hawaiian and Alaskan statehood and to include American Samoa; the term "State educational agency" in par. (2) to exclude an exception applicable to the District of Columbia and language which was effective by its terms only through June 30, 1948; the term "nonprofit private school" in par. (3), substituting "section 501(c) (3) of Title 26" for "section 101(6) of Title 26"; and the term "nonfood assistance" in par. (4), substituting "used by schools" for "used on school premises"; and added pars. (5)-(7).

Pub.L. 87-688 inserted "American Samoa," following "Guam," in par. (1).

1952 Amendment. Subsec. (d) (1). Act July 12, 1952, included Guam within the definition of "States".

Effective Date of 1962 Amendment. Amendment of this section by Pub.L. 87-688 applicable only with respect to funds appropriated after Sept. 25, 1962, see section 3(b) of Pub.L. 87-688, set out as a note under section 1753 of this title.

Effective Date of 1952 Amendment. Amendment of Act July 12, 1952, effective only with respect to funds appropriated after July 12, 1952, see note set out under section 1753 of this title.

Legislative History: For legislative history and purpose of Pub.L. 87-688, see 1962 U.S.Code Cong. and Adm.News, p. 2622. See, also, Pub.L. 87-823, 1962 U.S. Code Cong. and Adm.News, p. 3244.

Notes of Decisions

Recovery of overpayment 2
Violations 1

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1. Violations

Code 61-10-15 making it unlawful for any member of a county Board of Education to become pecuniarily interested in the proceeds of any contract with the Board applies to funds furnished the state department of education under this chapter creating the school lunch program. Hunt v. Allen, 1948, 53 S.E.2d 509, 131 W.Va. 627.

2. Recovery of overpayment

Where, under contract between Department of Agriculture and Board of Education, funds disbursed in conjunction with community school lunch program resulted in overpayments of $1,976.20, federal government was entitled to recover such overpayment regardless of whether remedy was for money had and received or for restitution for unjust enrichment and regardless of Oklahoma law setting forth procedural requirements, not complied with by government, pertaining to judgments on contracts against municipalities, including school districts, and purportedly preventing such indebtedness from arising on ground that receipt of excessive amounts was not authorized. U. S. v. Independent School Dist. No. 1 of Okmulgee County, Okl., C.A.Okl.1954, 209 F.2d 578.

CHAPTER 14.—DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

§§ 1801–1819. Transferred

Historical Note

Codification. The Atomic Energy Act of 1946, as amended, Act Aug. 1, 1946, c. 724, 60 Stat. 755, formerly classified to sections 1801–1819 of this title, was completely amended by Act Aug. 30, 1954, c. 1073, 68 Stat. 919, to read as follows: "Atomic Energy Act of 1954", which is classified to chapter 23 of this title.

Sections of Act Aug. 1, 1946 are now covered by sections of Act Aug. 30, 1954, as follows:

Sections	Sections
1801	2011–2013
1802	2031–2038
1803	2051–2053
1804, 1805	2061–2112
1806	2121, 2122
1807	2131–2140
1808	2151–2154
1809	2015–2208
1810	2161–2166
1811	2181–2190
1812	2201–2209
1813	2221–2224
1814	2231–2239
1815	2251–2257
1816	2271–2281
1817	2016
1818	2014
1819	2017

Amendments to 1946 Act. Section 1802, amended July 3, 1948, c. 828, 62 Stat. 1259, Oct. 11, 1949, c. 673, §§ 1–3, 63 Stat. 762; Sept. 23, 1950, c. 1000, §§ 1, 2, 64 Stat. 979; July 31, 1953, c. 283, § 1, 67 Stat. 240.

Section 1805, amended Oct. 30, 1951, c. 633, 65 Stat. 692; Aug. 13, 1954, c. 730, § 10 (a–c), 68 Stat. 715.

Section 1809, amended Aug. 13, 1953, c. 432, § 1, 67 Stat. 575.

Section 1810, amended Oct. 30, 1951, c. 633, 65 Stat. 692; Apr. 5, 1952, c. 159, § 1, 66 Stat. 43; July 31, 1953, c. 283, §§ 2–5, 67 Stat. 240.

Section 1812, amended Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972; July 17, 1953, c. 228, § 1, 67 Stat. 181; July 31, 1953, c. 283, §§ 6, 7, 67 Stat. 241.

Section 1815, amended Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972; July 31, 1953, c. 283, § 8, 67 Stat. 241.

Legislative History and Congressional Comment: For legislative history and purpose of Act Aug. 1, 1946, see 1946 U.S.Code Cong.Service, p. 1327. See, also, Act Sept. 23, 1950, 1950 U.S.Code Cong. Service, p. 3851; Act Oct. 30, 1951, 1951 U.S.Code Cong.Service, p. 2557; Act Apr. 5, 1952, 1952 U.S.Code Cong. and Adm. News, p. 1370; Act July 31, 1953, 1953 U.S.Code Cong. and Adm.News, p. 2043; Act Aug. 13, 1953, 1953 U.S.Code Cong. and Adm.News, p. 2379.

CHAPTER 15.—DAMAGE BY FLOOD OR OTHER CATASTROPHE

Sec.

§§ 1851–1854. Repealed. Sept. 30, 1950, c. 1125, § 9, 64 Stat. 1111

Historical Note

Sections, Act July 27, 1947, c. 320, 61 Stat. 422, related to availability of surplus property for alleviation of damage caused by floods or other catastrophe, and are now covered by sections 1855–1855g of this title.

§ 1855. Declaration of Congressional intent

It is the intent of Congress to provide an orderly and continuing means of assistance by the Federal Government to States and local governments in carrying out their responsibilities to alleviate suffering and damage resulting from major disasters, to repair essential public facilities in major disasters, and to foster the development of such State and local organizations and plans to cope with major disasters as may be necessary. Sept. 30, 1950, c. 1125, § 1, 64 Stat. 1109.

Library references: Levees and Flood Control ⇐1; C.J.S. Levees and Flood Control § 4.

Historical Note

Legislative History: For legislative history and purpose of Act Sept. 30, 1950, see 1950 U.S.Code Cong.Service, p. 4023.

§ 1855a. Definitions

As used in this chapter, the following terms shall be construed as follows unless a contrary intent appears from the context:

(a) "Major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe in any part of the United States which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States and local governments in alleviating the damage, hardship, or suffering caused thereby, and respecting which the governor of any State (or the Board of Commissioners of the District of Columbia) in which such catastrophe may occur or threaten certifies the need for disaster assistance under this chapter, and shall give assurance of expenditure of a reasonable amount of the funds of the government of such State, local governments therein, or other agencies, for the same or similar purposes with respect to such catastrophe;

(b) "United States" includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands;

(c) "State" means any State in the United States, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands;

(d) "Governor" means the chief executive of any State;

(e) "Local government" means any county, city, village, town, district, or other political subdivision of any State, or the District of Columbia;

(f) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, excepting, however, the American National Red Cross. Sept. 30, 1950, c. 1125, § 2, 64 Stat. 1109; June 27, 1962, Pub.L. 87–502, § 1, 76 Stat. 111.

Historical Note

1962 Amendment. Subsecs. (b), (e). Pub.L. 87–502 inserted Guam, American Samoa, and the Trust Territory of the Pacific Islands, and eliminated Alaska and Hawaii from the definitions of "United States" and "State."

Ex.Ord.No. 10634. Ex.Ord.No.10634, Aug. 31, 1955, 20 F.R. 6433, set out as a note under section 2092 of the Appendix to Title 50, War and National Defense, provides for loans to aid in the reconstruction, rehabilitation and replacement of facilities needed for national defense which are destroyed or damaged by a major disaster as defined in this section.

Legislative History: For legislative history and purpose of Pub.L. 87–502, see 1962 U.S.Code Cong. and Adm.News, p. 1752.

Cross References

Urban renewal assistance for area as a result of "major disaster" as determined by subsection (a) of this section, see section 1462 of this title.

§ 1855b. Assistance by Federal agencies; scope of services; reimbursement; disposition of moneys; liability

In any major disaster, Federal agencies are authorized when directed by the President to provide assistance (a) by utilizing or lending, with or without compensation therefor, to States and local governments their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act; (b) by distributing, through the American National Red Cross or otherwise, medicine, food, and other consumable supplies; (c) by donating or lending equipment and supplies, determined under then existing law to be surplus to the needs and responsibilities of the Federal Government, to States for use or distribution by them for the purposes of this chapter including the restoration of public facilities damaged or destroyed in such major disaster and essential rehabilitation of individuals in need as the result of such major disaster; (d) by performing on public or private lands protective and other work essential for the preservation of life and property, clearing debris and wreckage, making emergency repairs to and temporary replacements of public facilities of States and local governments damaged or destroyed in such major disaster, providing temporary housing or other emergency shelter for families who, as a result of such major disaster, require temporary housing or other emergency shelter, and making contributions to States and local governments for purposes stated in this subdivision. The authority conferred by this chapter, and any funds provided hereunder shall be supplementary to, and not in substitution for, nor in limitation of, any other authority conferred or funds provided under any other law. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this section shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies. The Federal Government shall not be liable for any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government in carrying out the provisions of this section. Sept. 30, 1950, c. 1125, § 3, 64 Stat. 1110; Aug. 3, 1951, c. 293, § 2, 65 Stat. 173; July 17, 1953, c. 225, 67 Stat. 180; June 27, 1962, Pub.L. 87–502, § 2, 76 Stat. 111.

Library references: United States ⇐53(6); C.J.S. United States § 65 et seq.

Historical Note

1962 Amendment. Pub.L. 87-502 inserted "States and" following "replacements of public facilities of" in clause (d).

1953 Amendment. Act July 17, 1953 amended clause (c) to make it clear that equipment and supplies which are surplus to the Federal government may be donated and loaned to States for use or distribution by them for disaster relief.

1951 Amendment. Act Aug. 3, 1951, authorized Federal agencies to provide temporary or other emergency shelter for families requiring it as a result of a major disaster.

Deferred Grazing Program. Pub.L. 85-25, Apr. 25, 1957, 71 Stat. 26, authorized the President as part of the assistance provided pursuant to sections 1855-1855g of this title to formulate and carry out, through the facilities of the Department of Agriculture, a deferred grazing program to include nonuse or limited use, or any needed combination thereof, in any county affected by drought in which the Secretary of Agriculture determines grazing of native rangeland is a substantial factor in agricultural production, and finds that limited or deferred grazing is necessary and appropriate for the reestablishment or conservation of grass for grazing. The program was available for a period of not more than five years after April 25, 1957.

Availability of Farm Commodities. Availability of farm commodities and products of Commodity Credit Corporation in connection with major disasters warranting assistance under this chapter, see section 1427 of Title 7, Agriculture.

Delegation of Authority. General delegation of authority, see note set out under section 630 of Title 5, Executive Departments and Government Officers and Employees.

Legislative History: For legislative history and purpose of Act July 17, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 1981. See, also, Pub.L. 87-502, 1962 U.S.Code Cong. and Adm.News, p. 1752.

§ 1855c. Cooperation with other agencies

In providing such assistance hereunder, Federal agencies shall cooperate to the fullest extent possible with each other and with States and local governments, relief agencies, and the American National Red Cross, but nothing contained in this chapter shall be construed to limit or in any way affect the responsibilities of the American National Red Cross under chapter 1 of Title 36. Sept. 30, 1950, c. 1125, § 4, 64 Stat. 1110.

Historical Note

Delegation of Authority. General delegation of authority, see note set out under section 630 of Title 5, Executive Departments and Government Officers and Employees.

§ 1855d. Coordination of Federal activities; rules and regulations

(a) In the interest of providing maximum mobilization of Federal assistance under this chapter, the President is authorized to coordinate in such manner as he may determine the activities of Federal agencies in providing disaster assistance. The President may direct any Federal agency to utilize its available personnel, equipment, supplies, facilities, and other resources, in accordance with the authority herein contained.

(b) The President may, from time to time, prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this chapter, and he may exercise any power or authority conferred on him by any section of this chapter either directly or through such Federal agency as he may designate. Sept. 30, 1950, c. 1125, § 5, 64 Stat. 1110.

Historical Note

Delegation of Authority. General delegation of authority, see note set out under section 630 of Title 5, Executive Departments and Government Officers and Employees.

EXECUTIVE ORDER NO. 10427

Jan. 16, 1953, 18 F.R. 407, as amended by Ex.Ord.No.10737, Oct. 29, 1957, 22 F.R. 8799; Ex.Ord.No.10773, July 1, 1958, 23 F.R. 5061; Ex.Ord.No.10782, Sept. 8, 1958, 23 F.R. 6971; Ex.Ord.No.11051, Sept. 28, 1962, 27 F.R. 9683

ADMINISTRATION OF DISASTER RELIEF

By virtue of the authority vested in me by the act of September 30, 1950, entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes", 64 Stat. 1109, as amended (42 U.S.C.1855 ff.) [this chapter], hereinafter referred to as the act, and as President of the United States, it is hereby ordered as follows:

Section 1. The following-described authority and functions shall be exercised or performed by the Director of the office of Emergency Planning:

(a) The authority conferred upon the President by section 3 of the act [section 1855(b) of this title] to direct Federal agencies to provide assistance in major disasters.

(b) The authority conferred upon the President by section 5(a) of the act [subsection (a) of this section] to coordinate the activities of Federal agencies in providing disaster assistance, and to direct any Federal agency to utilize its available personnel, equipment, supplies, facilities, and other resources, in accordance with the authority contained in the act.

(c) The authority conferred upon the President by section 7 of the Act [section 1855f of this title] to reimburse any Federal agency for any of its authorized expenditures made under section 3 of the Act [section 1855b of this title] in connection with a major disaster: *Provided, however,* That such reimbursement shall be made from funds allocated by the President to the Administrator for use in aid of a specific State under section 2(e) 2 of the Executive order by which this subsection (c) was added to this order [Ex.Ord.10737 set out as a note under this section], and, *Provided further,* That such authority shall be exercised subject to the concurrence of the Director of the Bureau of the Budget.

(d) The authority to issue rules and regulations governing such reimbursement, subject to the concurrence of the Director of the Bureau of the Budget.

(e) The authority to prescribe such rules and regulations as may be necessary and proper to carry out the provisions of sections 3 and 5 of the Act, as amended [sections 1855b and 1855d of this title].

(f) The preparation of proposed rules and regulations for the consideration of the President and issuance by him under section 5(b) of the act [subsection (b) of this section].

(g) The preparation of the annual and supplemental reports provided for by section 8 of the act [section 1855g of this title], for the consideration of the President and transmittal by him to the Congress.

Sec. 2. In order to further the most effective utilization of the personnel, equipment, supplies, facilities, and other resources of Federal agencies pursuant to the act during a major disaster, such agencies shall from time to time make suitable plans and preparations in anticipation of their responsibilities in the event of a major disaster. The Director of the Office of Emergency Planning shall coordinate on behalf of the President such plans and preparations.

Sec. 3. To the extent authorized by the act, the Director of the Office of Emergency Planning shall foster the development of such State and local organizations and plans as may be necessary to cope with major disasters.

Sec. 4. (a) The Director of the Office of Emergency Planning may carry out any authority or function delegated or assigned to him by the provisions of this order through any other officer of the Office of Emergency Planning.

(b) The Director of the Office of Emergency Planning may delegate or assign to the head of any agency of the executive branch of the Government, subject to the consent of the agency head concerned in each case, any authority or function delegated or assigned to the said Director by the provisions of this order. Any such head of agency may redelegate any authority or function so delegated or assigned to him by the Director to any officer or employee subordinate to such head of agency whose appointment is required to be made by and with the advice and consent of the Senate.

Sec. 5. The Director of the Office of Emergency Planning may delegate any authority or function delegated or assigned to him by the provisions of this order to any other officer or officers of the Office of Emergency Planning or, with the consent of the head thereof, to any other Federal agency.

Sec. 6. Federal disaster relief provided under the act shall be deemed to be supplementary to relief afforded by State, local, or private agencies and not in substitution therefor; Federal financial contributions for disaster relief shall be conditioned upon reasonable State and local expenditures for such relief; the limited responsibility of the Federal Government for disaster relief shall be made clear to State and local agencies concerned; and the States shall be encouraged to provide funds which will be available for disaster relief purposes.

Sec. 7. As used herein, the terms "major disaster" and "Federal agency" shall have the meanings ascribed to them in the act.

Sec. 8. So much of the records of the Housing and Home Finance Agency relating to the activities delegated by Executive Order No. 10221 [set out as a note under this section] as the Housing and Home Finance Administrator and the Director of the Office of Emergency Planning shall jointly determine shall be transferred to the Office of Emergency Planning.

Sec. 9. Executive Order No. 10221 of March 2, 1951 (16 F.R. 2051) is hereby revoked: *Provided,* That the Housing and Home Finance Administrator is hereby authorized and directed to carry out and complete all activities, including reports thereon, provided for by that order in connection with any disaster determined, in accordance with the provisions of the act and prior to the effective date of this order, to be a major disaster: *And provided further,* That the Housing and Home Finance Administrator shall prepare the annual and supplemental reports provided for by section 8 of the act [section 1855g of this title] for the calendar year 1952 for the consideration of the President and transmittal by him to the Congress.

Sec. 10. This order shall become effective January 16, 1953.

EXECUTIVE ORDER NO. 10737

Oct. 29, 1957, 22 F.R 8799, as amended by Ex.Ord.No.10773, July 1, 1958, 23 F.R. 5061; Ex.Ord.No.10782, Sept. 8, 1958, 23 F.R. 6971; Ex.Ord.No.11051, Sept. 28, 1962, 27 F.R. 9683

FURTHER PROVISIONS FOR THE ADMINISTRATION OF DISASTER RELIEF

Section 1. Any State in which a major disaster has occurred which can establish the need for Federal assistance and which shall give such assurance as may be required of expenditure of a reasonable amount of the funds of the government of such State, local governments therein, or other agencies, for the same or similar purpose with respect to such disaster shall be eligible to receive Federal assistance under this order.

Sec. 2. The following procedures for qualifying for assistance under this order shall be observed upon the occurrence, or, insofar as applicable, upon the threat, of a major disaster within a State which, in the opinion of its Governor, constitutes or will eventuate in, respectively, a major disaster requiring supplementary Federal assistance:

(a) The Governor shall present to the Director of the Office of Emergency Planning (hereinafter referred to as the Director), through the appropriate Regional Administrator of the Office of Emergency Planning, any request for Federal assistance, which request shall include assurance of expenditure of a reasonable amount of the funds of the State, local governments therein, or other agencies for alleviating damage resulting from

such disaster, together with the following information:

(1) An estimate of the severity and extent of damage resulting from the disaster and the total funds, personnel, equipment, and material or other resources required to alleviate such damage. As used in this order, the term "damage" comprehends suffering and hardship.

(2) A statement of action taken or recommended to be taken by the State legislature or local legislative and governing authorities with regard to the disaster.

(3) An estimate of State and local funds, personnel, equipment and material or other resources, available and to be made available, to alleviate such damage.

(4) A statement of the extent and nature of Federal assistance needed, including an estimate of the minimum Federal funds, personnel, equipment, material or other resources needed to alleviate the damage.

(b) Any Regional Administrator shall forward each request for Federal assistance received by him from a Governor in consonance with the provisions of this order, together with a report and the recommendations of the Regional Administrator thereon, to the Director.

(c) The Director shall forward to the President each request of a Governor for assistance under this order together with the Director's recommendation as to action by the President thereon. In arriving at his recommendation the Director shall consider (1) the severity and extent of the disaster, (2) the reasonableness of State and local efforts in relation to the severity of the disaster, the resources and funds available to State and local governments for the alleviation of damage resulting from the disaster, and the operational disaster plans of the State and local governments, (3) the extent and nature of Federal assistance requested, (4) the report and recommendation of the Regional Administrator, and (5) any other available information.

(d) Upon consideration of any request of a Governor hereunder and of information and recommendations pertaining thereto, a determination will be made by the President as to whether or not the conditions constitute a major disaster within the meaning of the Act [this chapter] and the Governor will be notified immediately of such determination.

(e) If it is determined that a major disaster has occurred or threatens,

(1) Federal assistance will be made available on the basis of an agreement, which shall be jointly executed by the Governor, acting for the State, and the Director, acting for the Federal Government. Such agreement shall contain the assurance of the State that a reasonable amount of the funds of the State, local governments or other agencies therein will be expended in alleviating damage caused by the disaster and such other terms and conditions, consistent with the provisions of the Act [this chapter] as the Director may require.

(2) If and as may be necessary, the President will allocate to the Director funds for use in connection with the specific major disaster. The funds so allocated to the Director may be utilized by him (i) upon a showing of need for reallocation for use in aid of the State and local governments, and (ii) for reimbursement pursuant to the provisions of section 1(c) of Executive Order No. 10427 of January 16, 1953 [set out as a note under this section], as added by this order.

(f) Federal assistance heretofore or hereafter extended under the Act shall terminate upon notice by the Director to the Governor of the State in which a major disaster has occurred, or upon the expiration of one year from the date of notification to the Governor of the President's determination that a major disaster exists, whichever is first: *Except, however,* in unusual circumstances, the Director, with the consent of the President, may extend this period: *Provided,* That upon a showing of need, the Director may extend such termination dates, for such purposes and such periods of time as he may determine to be necessary, with respect to disaster relief assistance solely for agricultural purposes.

Sec. 3. [Amended section 1 of Ex.Ord. 10427, set out as a note under this section]

Sec. 4. (a) The Director of the Office of Emergency Planning may carry out any authority or function delegated or assigned to him by the provisions of this order through any other officer of the Office of Emergency Planning.

(b) The Director of the Office of Emergency Planning may delegate or assign to the head of any agency of the executive branch of the Government, subject to the consent of the agency head concerned in each case, any authority or function delegated or assigned to the said Director by the provisions of this order. Any such head of agency may redelegate any authority or function so delegated or assigned to him by the Di-

rector to any officer or employee subordinate to such head of agency whose appointment is required to be made by and with the advice and consent of the Senate.

§ 1855e. Repair and reconstruction of damaged United States facilities; availability of funds

If facilities owned by the United States are damaged or destroyed in any major disaster and the Federal agency having jurisdiction thereof lacks the authority or an appropriation to repair, reconstruct, or restore such facilities, such Federal agency is authorized to repair, reconstruct, or restore such facilities to the extent necessary to place them in a reasonably usable condition and to use therefor any available funds not otherwise immediately required: *Provided, however*, That the President shall first determine that the repair, reconstruction, or restoration is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation therefor. If sufficient funds are not available to such Federal agency for use in repairing, reconstructing, or restoring such facilities as above provided, the President is authorized to transfer to such Federal agency funds made available under this chapter in such amount as he may determine to be warranted in the circumstances. If said funds are insufficient for this purpose, there is authorized to be appropriated to any Federal agency repairing, reconstructing, or restoring facilities under authority of this section such sum or sums as may be necessary to reimburse appropriated funds to the amount expended therefrom. Sept. 30, 1950, c. 1125, § 6, 64 Stat. 1111.

Historical Note

Delegation of Authority. General delegation of authority, see note set out under section 630 of Title 5, Executive Departments and Government Officers and Employees.

§ 1855f. Utilization of services and facilities of other agencies; employment of temporary personnel; incurring of obligations; reimbursement

In carrying out the purposes of this chapter, any Federal agency is authorized to accept and utilize with the consent of any State or local government, the services and facilities of such State or local government, or of any agencies, officers, or employees thereof. Any Federal agency, in performing any activities under section 1855b of this title, is authorized to employ temporarily additional personnel without regard to the civil-service laws and the Classification Act of 1949, as amended, and to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel and communication, and for the supervision and administra-

tion of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by any agency in such amount as may be made available to it by the President out of the funds specified in section 1855g of this title. The President may, also, out of such funds, reimburse any Federal agency for any of its expenditures under section 1855b of this title in connection with a major disaster, such reimbursement to be in such amounts as the President may deem appropriate. Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972; Sept. 30, 1950, c. 1125, § 7, 64 Stat. 1111.

Historical Note

References in Text. The civil service laws, referred to in the text, are classified generally to Title 5, Executive Departments and Government Officers and Employees.

The Classification Act of 1949, referred to in the text, is classified to chapter 21 of Title 5.

Codification. "Classification Act of 1949" was substituted for "Classification Act of 1923" on authority of Act Oct. 28, 1949.

Delegation of Authority. General delegation of authority, see note set out under section 630 of Title 5, Executive Departments and Government Officers and Employees.

§ 1855g. Appropriations; reports

There is authorized to be appropriated to the President a sum or sums, not exceeding $5,000,000 in the aggregate, to carry out the purposes of this chapter. The President shall transmit to the Congress at the beginning of each regular session a full report covering the expenditure of the amounts so appropriated with the amounts of the allocations to each State under this chapter. The President may from time to time transmit to the Congress supplemental reports in his discretion, all of which reports shall be referred to the Committees on Appropriations and the Committees on Public Works of the Senate and the House of Representatives. Sept. 30, 1950, c. 1125, § 8, 64 Stat. 1111.

Library references: United States ⇐85; C.J.S. United States § 123.

CHAPTER 15A.—RECIPROCAL FIRE PROTECTION AGREEMENTS

§ 1856. Definitions

As used in this chapter—

(a) The term "agency head" means the head of any executive department, military department, agency, or independent establishment in the executive branch of the Government;

(b) The term "fire protection" includes personal services and equipment required for fire prevention, the protection of life and property from fire, and fire fighting; and

(c) The term "fire organization" means any governmental entity or public or private corporation or association maintaining fire protection facilities within the United States, its Territories and possessions, and any governmental entity or public or private corporation or association which maintains fire protection facilities in any foreign country in the vicinity of any installation of the United States. May 27, 1955, c. 105, § 1, 69 Stat. 66.

Historical Note

Legislative History: For legislative history and purpose of Act May 27, 1955, see 1955 U.S.Code Cong. and Adm.News, p. 1948.

§ 1856a. Authority to enter into reciprocal agreement; waiver of claims; reimbursement; ratification of prior agreements

(a) Each agency head charged with the duty of providing fire protection for any property of the United States is authorized to enter into a reciprocal agreement, with any fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid in furnishing fire protection for such property and for other property for which such organization normally provides fire protection. Each such agreement shall include a waiver by each party of all claims against every other party for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement. Any such agree-

ment may provide for the reimbursement of any party for all or any part of the cost incurred by such party in furnishing fire protection for or on behalf of any other party.

(b) Any agreement heretofore executed which would have been authorized by this chapter, if this chapter had been in effect on the date of execution thereof, is ratified and confirmed. May 27, 1955, c. 105, § 2, 69 Stat. 66.

Library references: United States ⇐57; C.J.S. United States § 74.

§ 1856b. Emergency assistance

In the absence of any agreement authorized or ratified by section 1856a of this title, each agency head is authorized to render emergency assistance in extinguishing fires and in preserving life and property from fire, within the vicinity of any place at which such agency maintains fire-protection facilities, when the rendition of such assistance is determined, under regulations prescribed by the agency head, to be in the best interest of the United States. May 27, 1955, c. 105, § 3, 69 Stat. 67.

§ 1856c. Service in line of duty

Any service performed under section 1856a or section 1856b of this title, by any officer or employee of the United States or any member of any armed force of the United States shall constitute service rendered in line of duty in such office, employment, or force. The performance of such service by any other individual shall not constitute such individual an officer or employee of the United States for the purposes of the Federal Employees' Compensation Act, as amended. May 27, 1955, c. 105, § 4, 69 Stat. 67.

Historical Note

References in Text. The Federal Employees' Compensation Act, referred to in the text, is classified to sections 751–756, 757–791 and 793 of Title 5, Executive Departments and Government Officers and Employees.

§ 1856d. Funds

Funds available to any agency head for fire protection on installations or in connection with activities under the jurisdiction of such agency may be used to carry out the purposes of this chapter. All sums received by any agency head for fire protection rendered pursuant to this chapter shall be covered into the Treasury as miscellaneous receipts. May 27, 1955, c. 105, § 5, 69 Stat. 67.

CHAPTER 15B.—AIR POLLUTION CONTROL

Sec.

Sec.

§ 1857. Congressional findings; purposes of chapter

(a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this chapter are—

(1) to protect the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

July 14, 1955, c. 360, § 1, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 392.

Historical Note

Codification. Provisions similar to those comprising this section were contained in a prior section 1857. Act July 14, 1955, c. 360, § 1, 69 Stat. 322, prior to the general amendment of this chapter by Pub.L. 88–206.

Short Title. Section 14 of Act July 14, 1955 as added by section 1 of Pub.L. 88–206 provided that: "This Act [enacting this chapter] may be cited as the 'Clean Air Act'."

Legislative History: For legislative history and purpose of Act July 14, 1955. see 1955 U.S.Code Cong. and Adm.News, p. 2457.

EXECUTIVE ORDER NO. 10779

Aug. 21, 1958, 23 F.R. 6487

COOPERATION OF FEDERAL AGENCIES WITH STATE AND LOCAL AUTHORITIES

The heads of the departments, agencies, and independent establishments of the executive branch of the Government shall take such action as may be practicable and consistent with law, in cooperation with State and local authorities concerned with the control of air pollution, to insure the prevention or abatement of atmospheric pollution caused by or resulting from Federal activities, including industrial and manufacturing processes operated or controlled by the Federal Government and the destruction of foodstuffs or other materials by order, or under the supervision, of Federal regulatory authorities, in a manner consistent, so far as feasible, with programs authorized under State or local law pertaining to the preservation of the cleanliness of the atmosphere and applicable to the agencies of governmental bodies creating such law and to the public generally.

Dwight D. Eisenhower

Notes of Decisions

Construction 1, 2
With other laws 2

Library references

Health ⇐28.
C.J.S. Health § 21.

1. Construction

Under this section declaring it to be Congressional policy to preserve and protect primary responsibilities and rights of state and local government in controlling air pollution, Congress was not attempting to give up its inspection of vessels, locomotives, motor carriers, and other things which might conceivably cause or be involved in smoke pollution. Huron Portland Cement Co. v. City of Detroit, 1959, 93 N.W.2d 888, 355 Mich. 227, affirmed 80 S.Ct. 813, 362 U.S. 440, 4 L.Ed.2d 852, 78 A.L.R.2d 1294.

2. —— With other laws

Municipal smoke abatement ordinance, as applied to emission of smoke from steamship at port of the municipality, was not in conflict with section 361 et seq. of Title 46 and this chapter pertaining to inspection of vessels or to air pollution, was not clearly aimed at regulation of interstate commerce, had only indirect and incidental effect on and did not unduly interfere with interstate commerce, and constituted a reasonable exercise of local police power. Huron Portland Cement Co. v. City of Detroit, 1959, 93 N.W.2d 888, 355 Mich. 227, affirmed 80 S.Ct. 813, 362 U.S. 440, 4 L.Ed.2d 825, 78 A.L.R.2d 1294.

§ 1857a. Cooperative activities—Interstate cooperation; uniform State laws; State compacts

(a) The Secretary shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

Federal cooperation

(b) The Secretary shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure

the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

Consent of Congress to compacts

(c) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. July 14, 1955, c. 360, § 2, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 393.

Historical Note

Codification. Provisions similar to those comprising the first clause of subsec. (a) of this section were contained in subsec. (b) (1) of a prior section 1857a, Act July 14, 1955, c. 360, § 2, 69 Stat. 322, prior to the general amendment of this chapter by Pub.L. 88–206.

Such prior section 1857a also related to research programs, joint investigations and powers of Surgeon General. See section 1857b of this title.

§ 1857b. Research and development program; powers and duties of Secretary—Research, investigations, experiments, training, demonstrations, surveys and studies; technical services and financial assistance; specific problems of air pollution; sulfur extraction research program

(a) The Secretary shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution; and

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities; and

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommend-

ing a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located; and

(4) initiate and conduct a program of research directed toward the development of improved, low-cost techniques for extracting sulfur from fuels.

Availability of information and recommendations; cooperative activities; research grants, etc.; contracts; training; fellowships; collection and dissemination of basic data on chemical, physical and biological effects of air quality; process, method and device development

(b) In carrying out the provisions of the preceding subsection the Secretary is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of this section;

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 529 of Title 31 and section 5 of Title 41;

(5) provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications;

(6) establish and maintain research fellowships, in the Department of Health, Education, and Welfare and at public or nonprofit private educational institutions or research organizations;

(7) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof; and

(8) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution.

Results of other scientific studies; criteria reflecting latest scientific knowledge; availability, revisions; recommendations of criteria of air quality

(c) (1) In carrying out the provisions of subsection (a) of this section the Secretary shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons by the various known air pollution agents (or combinations of agents).

(2) Whenever he determines that there is a particular air pollution agent (or combination of agents), present in the air in certain quantities, producing effects harmful to the health or welfare of persons, the Secretary shall compile and publish criteria reflecting accurately the latest scientific knowledge useful in indicating the kind and extent of such effects which may be expected from the presence of such air pollution agent (or combination of agents) in the air in varying quantities. Any such criteria shall be published for informational purposes and made available to municipal, State, and interstate air pollution control agencies. He shall revise and add to such criteria whenever necessary to reflect accurately developing scientific knowledge.

(3) The Secretary may recommend to such air pollution control agencies and to other appropriate organizations such criteria of air quality as in his judgment may be necessary to protect the public health and welfare. July 14, 1955, c. 360, § 3, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 394.

Historical Note

Codification. Provisions similar to those comprising subsec. (a) (3) of this section were contained in subsec. (a) of a prior section 1857b, Act July 14, 1955, c. 360, § 3, 69 Stat. 322, as amended Oct. 9, 1962, Pub.L. 87–761, § 2, 76 Stat. 760, prior to the general amendment of this chapter by Pub.L. 88–206.

Prior Provisions. Provisions similar to those comprising this section were contained in former sections 1857a–1857d, Act July 14, 1955, c. 360, §§ 2–5, 69 Stat. 322 (section 1857b as amended Oct. 9, 1962, Pub.L. 87–761, § 2, 76 Stat. 760; section 1857d as amended Sept. 22, 1959, Pub.L. 86–365, § 1, 73 Stat. 646 and Oct. 9, 1962, Pub.L. 87–761, § 1, 76 Stat. 760), prior to the general amendment of this chapter by Pub.L. 88–206.

Study of Substances Discharged from Exhausts of Motor Vehicles. Pub.L. 86–493, June 8, 1960, 74 Stat. 162, required the Surgeon General of the Public Health Service to conduct a thorough study for the purpose of determining, with respect to the various substances discharged from the exhausts of motor vehicles, the amounts and kinds of such substances which, from the standpoint of human health, it is safe for motor vehicles to discharge into the atmosphere under the various conditions under which such vehicles may operate. The Surgeon General was directed to submit a report to Congress as soon as practicable, but not later than two years after June 8, 1960. See section 1857e of this title.

§ 1857c. Grants for air pollution control programs—Amount; limitations; "regional air pollution control program" defined

(a) From the sums appropriated annually for the purposes of this chapter but not to exceed 20 per centum of any such appropriation,

the Secretary is authorized to make grants to air pollution control agencies in an amount up to two-thirds of the cost of developing, establishing, or improving programs for the prevention and control of air pollution: *Provided*, That the Secretary is authorized to make grants to intermunicipal or interstate air pollution control agencies (described in section 1857h (b) (2) and (4) of this title) in an amount up to three-fourths of the cost of developing, establishing, or improving, regional air pollution programs. As used in this subsection, the term "regional air pollution control program" means a program for the prevention and control of air pollution in an area that includes the areas of two or more municipalities, whether in the same or different States.

Terms and conditions; regulations; factors for consideration; expenditure and consultation requirements

(b) From the sums available under subsection (a) of this section for any fiscal year, the Secretary shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Secretary may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Secretary shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential air pollution problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for air pollution programs will be less than its expenditures were for such programs during the preceding fiscal year. No grant shall be made under this section until the Secretary has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

State expenditure limitation

(c) Not more than 12½ per centum of the grant funds available under subsection (a) of this section shall be expended in any one State. July 14, 1955, c. 360, § 4, as added Dec. 17, 1963, Pub.L. 88-206, § 1, 77 Stat. 395.

Historical Note

Codification. A prior section 1857c, Act July 14, 1955, c. 360, § 4, 69 Stat. 322, related to the preparation of reports and recommendations. See section 1857b(b)(1) of this section.

Prior Provisions. Provisions similar to those comprising subsecs. (a) and (b) of this section were contained in former section 1857d, Act July 14, 1955, c. 360, § 5, 69 Stat. 322, as amended Sept. 22, 1959, Pub.L. 86-365, § 1, 73 Stat. 646; Oct. 9, 1962, Pub.L. 87-761, § 1, 76 Stat. 760, prior to the general amendment of this chapter by Pub.L. 88-206.

§ 1857d. Enforcement measures against air pollution—Air pollution subject to abatement

(a) The pollution of the air in any State or States which endangers the health or welfare of any persons, shall be subject to abatement as provided in this section.

Encouragement of municipal, State and interstate action

(b) Consistent with the policy declaration of this chapter, municipal, State, and interstate action to abate air pollution shall be encouraged and shall not be displaced by Federal enforcement action except as otherwise provided by or pursuant to a court order under subsection (g) of this section.

Notification of interstate and intrastate pollution; conference of municipal, State and interstate agencies; conference for interstate pollution called by Secretary; agency cooperation on surveys or studies; persons in attendance at conference; notice of conference date; summary of conference discussions

(c) (1) (A) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Secretary shall, if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

(B) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Secretary shall, if such request refers to alleged air pollution which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate and if a municipality affected by such air pollution, or the municipality in which such pollution originates, has either made or concurred in such request, give formal notification thereof to the State air pollution control agency, to the air pollution control agencies of the municipality where such discharge or discharges originate and of the municipality or municipalities alleged to be adversely affected thereby, and to any interstate air pollution control agency, whose jurisdictional area includes any such municipality and shall promptly call a conference of such agency or agencies, unless, in the judgment of the Secretary, the effect of such pollution is not of such significance as to warrant exercise of Federal jurisdiction under this section.

(C) The Secretary may, after consultation with State officials of all affected States, also call such a conference whenever, on the basis of reports, surveys, or studies, he has reason to believe that any pollution referred to in subsection (a) of this section is occurring and is endangering the health and welfare of persons in a State other than that in which the discharge or discharges originate. The Secretary shall invite the cooperation of any municipal, State, or interstate air pollution control agencies having jurisdiction in the affected area on any surveys or studies forming the basis of conference action.

(2) The agencies called to attend such conference may bring such persons as they desire to the conference. Not less than three weeks' prior notice of the conference date shall be given to such agencies.

(3) Following this conference, the Secretary shall prepare and forward to all air pollution control agencies attending the conference a summary of conference discussions including (A) occurrence of air pollution subject to abatement under this chapter; (B) adequacy of measures taken toward abatement of the pollution; and (C) nature of delays, if any, being encountered in abating the pollution.

Recommendations of Secretary for remedial action by agencies; commencement of recommended action

(d) If the Secretary believes, upon the conclusion of the conference or thereafter, that effective progress toward abatement of such pollution is not being made and that the health or welfare of any persons is being endangered, he shall recommend to the appropriate State, interstate, or municipal air pollution control agency (or to all such agencies) that the necessary remedial action be taken. The Secretary shall allow at least six months from the date he makes such recommendations for the taking of such recommended action.

Public hearings; place, notice, evidence; hearing board; number, membership, findings as to occurrence of pollution and progress toward abatement, recommendations to Secretary of measures reasonable and suitable to secure abatement; Secretary's transmission of findings and recommendations for abatement within reasonable time

(e) (1) If, at the conclusion of the period so allowed, such remedial action or other action which in the judgment of the Secretary is reasonably calculated to secure abatement of such pollution has not been taken, the Secretary shall call a public hearing, to be held in or near one or more of the places where the discharge or discharges causing or contributing to such pollution originated, before a hearing board of five or more persons appointed by the Secretary. Each State in which any discharge causing or contributing to such pollution originates and each State claiming to be adversely affected by such pollution shall be given an opportunity to select one member of such hearing board and each Federal department, agency, or instrumentality having a substantial interest in the subject matter as determined by the Secretary shall be given an opportunity to select

one member of such hearing board, and one member shall be a representative of the appropriate interstate air pollution agency if one exists, and not less than a majority of such hearing board shall be persons other than officers or employees of the Department of Health, Education, and Welfare. At least three weeks' prior notice of such hearing shall be given to the State, interstate, and municipal air pollution control agencies called to attend such hearing and to the alleged polluter or polluters.

(2) On the basis of evidence presented at such hearing, the hearing board shall make findings as to whether pollution referred to in subsection (a) of this section is occurring and whether effective progress toward abatement thereof is being made. If the hearing board finds such pollution is occurring and effective progress toward abatement thereof is not being made it shall make recommendations to the Secretary concerning the measures, if any, which it finds to be reasonable and suitable to secure abatement of such pollution.

(3) The Secretary shall send such findings and recommendations to the person or persons discharging any matter causing or contributing to such pollution; to air pollution control agencies of the State or States and of the municipality or municipalities where such discharge or discharges originate; and to any interstate air pollution control agency whose jurisdictional area includes any such municipality, together with a notice specifying a reasonable time (not less than six months) to secure abatement of such pollution.

Judicial proceedings to secure abatement of the pollution

(f) If action reasonably calculated to secure abatement of the pollution within the time specified in the notice following the public hearing is not taken, the Secretary—

(1) in the case of pollution of air which is endangering the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, may request the Attorney General to bring a suit on behalf of the United States to secure abatement of pollution, and

(2) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law or, at the request of the Governor of such State, shall request the Attorney General to bring suit on behalf of the United States to secure abatement of the pollution.

Federal court proceedings; evidence; jurisdiction of court

(g) The court shall receive in evidence in any suit brought in a United States court under subsection (f) of this section a transcript of the proceedings before the board and a copy of the board's recommendations and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability of complying with such standards as may be applicable and to the physical and economic feasibility of securing abatement of any pollution proved, shall have jurisdiction to enter such judgment, and orders enforcing such judgment, as the public interest and the equities of the case may require.

Compensation and travel expenses for members of hearing board

(h) Members of any hearing board appointed pursuant to subsection (e) of this section who are not regular full-time officers or employees of the United States shall, while participating in the hearing conducted by such board or otherwise engaged on the work of such board, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $50 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (section 73b—2 of Title 5) for persons in the Government service employed intermittently.

Information reports: filing with Secretary, form, contents, oath, time for filing, divulgence of trade secrets, confidential information; defaults; forfeitures: payments into Treasury, civil actions, venue, remission or mitigation, duty of United States attorneys

(i) (1) In connection with any conference called under this section, the Secretary is authorized to require any person whose activities result in the emission of air pollutants causing or contributing to air pollution to file with him, in such form as he may prescribe, a report, based on existing data, furnishing to the Secretary such information as may reasonably be required as to the character, kind, and quantity of pollutants discharged and the use of devices or other means to prevent or reduce the emission of pollutants by the person filing such a report. After a conference has been held with respect to any such pollution the Secretary shall require such reports from the person whose activities result in such pollution only to the extent recommended by such conference. Such report shall be made under oath or otherwise, as the Secretary may prescribe, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe, unless additional time be granted by the Secretary. No person shall be required in such report to divulge trade secrets or secret processes and all information reported shall be considered confidential for the purposes of section 1905 of Title 18..

(2) If any person required to file any report under this subsection shall fail to do so within the time fixed by the Secretary for filing the same, and such failure shall continue for thirty days after

notice of such default, such person shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where such person has his principal office or in any district in which he does business: *Provided*, That the Secretary may upon application therefor remit or mitigate any forfeiture provided for under this subsection and he shall have authority to determine the facts upon all such applications.

(3) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures. July 14, 1955, c. 360, § 5, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 396.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

Codification. A prior section 1857d, Act July 14, 1955, c. 360, § 5, 69 Stat. 322, as amended Sept. 22, 1959, Pub.L. 86–365, § 1, 73 Stat. 646; Oct. 9, 1962, Pub.L. 87–761, § 1, 76 Stat. 760, prior to the general amendment of this chapter by Pub.L. 88–206, related to appropriations, grants-in-aid and contracts. See sections 1857b (3)–(5), 1857c(b) and 1857l of this title.

§ 1857e. Automotive vehicle exhaust and fuel pollution—Technical committee for development of exhaust control devices and pollution free fuels; membership; representation of Government and industries; meetings; functions

(a) The Secretary shall encourage the continued efforts on the part of the automotive and fuel industries to develop devices and fuels to prevent pollutants from being discharged from the exhaust of automotive vehicles, and to this end shall maintain liaison with automotive vehicle, exhaust control device, and fuel manufacturers. For this purpose, he shall appoint a technical committee, whose membership shall consist of an equal number of representatives of the Department and of automotive vehicle, exhaust control device, and fuel manufacturers. The committee shall meet from time to time at the call of the Secretary to evaluate progress in the development of such devices and fuels and to develop and recommend research programs which could lead to the development of such devices and fuels.

Reports to Congress

(b) One year after December 17, 1963, and semi-annually thereafter, the Secretary shall report to the Congress on measures taken toward the resolution of the vehicle exhaust pollution problem and efforts to improve fuels including (A) occurrence of pollution as a

result of discharge of pollutants from automotive exhaust; (B) progress of research into development of devices and fuels to reduce pollution from exhaust of automotive vehicles; (C) criteria on degree of pollutant matter discharged from automotive exhausts; (D) efforts to improve fuels so as to reduce emission of exhaust pollutants; and (E) his recommendations for additional legislation, if necessary, to regulate the discharge of pollutants from automotive exhausts. July 14, 1955, c. 360, § 6, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 399.

Historical Note

Codification. A prior section 1857e, Act July 14, 1955, c. 360, § 6, 69 Stat. 323, prior to the general amendment of this chapter by Pub.L. 88–206, defined "State air pollution control agency", "local government air pollution control agency" and "State". See section 1857h(b), (d) of this title.

§ 1857f. Control of air pollution from Federal facilities—Federal cooperation

(a) It is hereby declared to be the intent of Congress that any Federal department or agency having jurisdiction over any building, installation, or other property shall, to the extent practicable and consistent with the interests of the United States and within any available appropriations, cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency in preventing and controlling the pollution of the air in any area insofar as the discharge of any matter from or by such building, installation, or other property may cause or contribute to pollution of the air in such area.

Classification of potential pollution sources; permits for discharge of such pollution: period; revocation; submission of plans, specifications and other information; conditions; reports to Congress

(b) In order to control air pollution which may endanger the health or welfare of any persons, the Secretary may establish classes of potential pollution sources for which any Federal department or agency having jurisdiction over any building, installation, or other property shall, before discharging any matter into the air of the United States, obtain a permit from the Secretary for such discharge, such permits to be issued for a specified period of time to be determined by the Secretary and subject to revocation if the Secretary finds pollution is endangering the health and welfare of any persons. In connection with the issuance of such permits, there shall be submitted to the Secretary such plans, specifications, and other information as he deems relevant thereto and under such conditions as he may prescribe. The Secretary shall report each January to the Congress the status of such permits and compliance therewith. July 14, 1955, c. 360, § 7, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 399.

Historical Note

Codification. A prior section 1857f, Act July 14, 1955, c. 360, § 7, 69 Stat. 323, related to research and experiments under other laws. See section 1857i(a) of this title.

Prior Provisions. Provisions similar to those comprising subsec. (a) of this section were contained in former section 1857g, Act July 14, 1955, c. 360, § 8, as added Sept. 22, 1959, Pub.L. 86-365, § 2, 73 Stat. 646, prior to the general amendment of this chapter by Pub.L. 88-206.

§ 1857g. Administration—Regulations; delegation of powers of Secretary

(a) The Secretary is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter. The Secretary may delegate to any officer or employee of the Department of Health, Education, and Welfare such of his powers and duties under this chapter, except the making of regulations, as he may deem necessary or expedient.

Detail of Public Health Service personnel to air pollution control agencies; payment of salaries and allowances

(b) Upon the request of an air pollution control agency, personnel of the Public Health Service may be detailed to such agency for the purpose of carrying out the provisions of this chapter. The provisions of section 215(d) of this title shall be applicable with respect to any personnel so detailed to the same extent as if such personnel had been detailed under section 215(b) of this title.

Payments under grants: installments; advances or reimbursement

(c) Payments under grants made under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Secretary. July 14, 1955, c. 360, § 8, as added Dec. 17, 1963, Pub.L. 88-206, § 1, 77 Stat. 400.

Historical Note

Codification. A prior section 1857g, Act July 14, 1955, c. 360, § 8, as added Sept. 22, 1959, Pub.L. 86-365, § 2, 73 Stat. 646, prior to the general amendment of this chapter by Pub.L. 88-206, provided for cooperative effort. See section 1857f(a) of this title.

§ 1857h. Definitions

When used in this chapter—

(a) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(b) The term "air pollution control agency" means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this chapter;

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency; or

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(c) The term "interstate air pollution control agency" means—

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) All language referring to adverse effects on welfare shall include but not be limited to injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to transportation. July 14, 1955, c. 360, § 9, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 400.

Historical Note

Prior Provisions. Provisions similar to subsecs. (b) and (d) of this section were contained in former section 1857e, Act July 14, 1955, c. 360, § 6, 69 Stat. 323, prior to the general amendment of this chapter by Pub.L. 88–206.

§ 1857i. Application to other laws; nonduplication of appropriations

(a) Except as provided in subsection (b) of this section, this chapter shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Secretary or any other Federal officer, department, or agency.

(b) No appropriation shall be authorized or made under section 241, 243, or 246(c) of this title for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this chapter. July 14, 1955, c. 360, § 10, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 401.

Historical Note

Prior Provisions. Provisions similar to those contained in subsec. (a) of this section were contained in former section 1857f, Act July 14, 1955, c. 360, § 7, 69 Stat. 323, prior to the general amendment of this chapter by Pub.L. 88–206.

§ 1857j. Records and audit

(a) Each recipient of assistance under this chapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter. July 14, 1955, c. 360, § 11, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 401.

§ 1857k. Separability of provisions

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby. July 14, 1955, c. 360, § 12, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 401.

§ 1857l. Appropriations

(a) There is hereby authorized to be appropriated to carry out section 1857c of this title for the fiscal year ending June 30, 1964, not to exceed $5,000,000.

(b) There is hereby authorized to be appropriated to carry out this chapter not to exceed $25,000,000 for the fiscal year ending June 30, 1965, not to exceed $30,000,000 for the fiscal year ending June 30, 1966, and not to exceed $35,000,000 for the fiscal year ending June 30, 1967. July 14, 1955, c. 360, § 13, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 401.

Historical Note

Prior Provisions. Provisions similar to this section were contained in former section 1857d, Act July 14, 1955, c. 360, § 5, 69 Stat. 322, as amended Sept. 22, 1959, Pub.L. 86-365, § 1, 73 Stat. 646; Oct. 9, 1962. Pub.L. 87-761, § 1, 76 Stat. 760, prior to the general amendment of this chapter by Pub.L. 88-206.

CHAPTER 16.—NATIONAL SCIENCE FOUNDATION

Sec.

Sec.

§ 1861. Establishment; composition

There is established in the executive branch of the Government an independent agency to be known as the National Science Foundation (hereinafter referred to as the "Foundation"). The Foundation shall consist of a National Science Board (hereinafter referred to as the "Board") and a Director. May 10, 1950, c. 171, § 2, 64 Stat. 149.

Library references: United States ⇨33; C.J.S. United States § 33.

Historical Note

Short Title. Congress in enacting Act May 10, 1950 [which added this chapter] provided by section 1 of Act May 10, 1950, that it shall be popularly known as the "National Science Foundation Act of 1950."

Legislative History: For legislative history and purpose of Act May 10, 1950, see 1950 U.S.Code Cong.Service, p. 2269.

REORGANIZATION PLAN NO. 2 OF 1962

Eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, as amended Aug. 14, 1964, Pub.L. 88-426, Title III, § 305(41), 78 Stat. 427.

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 29, 1962, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [sections 133z to 133z—15 of Title 5].

CERTAIN SCIENCE AGENCIES AND FUNCTIONS

PART I. OFFICE OF SCIENCE AND TECHNOLOGY

Section 1. Office of Science and Technology. There is hereby established in the Executive Office of the President the Office of Science and Technology, hereafter in this Part referred to as the Office.

Sec. 2. Director and deputy. (a) There shall be at the head of the Office the Director of the Office of Science and Technology, hereafter in this Part referred to as the Director. The Director shall be appointed by the President by and with the advice and consent of the Senate.

(b) There shall be in the Office a Deputy Director of the Office of Science and Technology, who shall be appointed by the President by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of vacancy in the office of Director.

(c) No person shall while holding office as Director or Deputy Director engage in any other business, vocation, or employment.

Sec. 3. Transfer and performance of functions. (a) There are hereby transferred from the National Science Foundation to the Director:

(1) So much of the functions conferred upon the Foundation by the provisions of section 3(a) (1) of the National Science Foundation Act of 1950 (42 U.S.C. 1862(a) (1) [section 1862(a) (1) of this title]) as will enable the Director to advise and assist the President in achieving coordinated Federal policies for the promotion of basic research and education in the sciences.

(2) The functions conferred upon the Foundation by that part of section 3(a) (6) of the National Science Foundation Act of 1950 (42 U.S.C. 1862(a) (6) [section 1862(a) (6) of this title]), which reads as follows: "to evaluate scientific research programs undertaken by agencies of the Federal Government."

(b) In carrying out the functions transferred by the provisions of section 3(a) of this reorganization plan, the Director shall assist the President as he may request with respect to the coordination of Federal scientific and technological functions and agencies.

(c) The Director may from time to time make such provisions as he deems appropriate authorizing the performance of any of his functions by any other officer, or by any employee or agency, of the Office.

Sec. 4. Personnel. The Director may appoint employees necessary for the work of the Office under the classified civil service and fix their compensation in accordance with the classification laws.

PART II. NATIONAL SCIENCE FOUNDATION

Sec. 21. Executive Committee. (a) There is hereby established the Executive Committee of the National Science Board, hereafter in this Part referred to as the Executive Committee, which shall be composed of five voting members. Four of the members shall be elected as hereinafter provided. The Director provided for in section 22 of this reorganization plan, ex officio, shall be the fifth member and the chairman of the Executive Committee.

(b) At its annual meeting held in 1964 and at each of its succeeding annual meetings the National Science Board, hereafter in this Part referred to as the Board, shall elect two of its members as members of the Executive Committee, and the

Executive Committee members so elected shall hold office for two years from the date of their election. Any person who has been a member of the Executive Committee (established by this reorganization plan) for six consecutive years shall thereafter be ineligible for service as a member thereof during the two-year period following the expiration of such sixth year. For the purposes of this subsection, the period between any two consecutive annual meetings of the Board shall be deemed to be one year.

(c) At its first meeting held after the effective date of this section the Board shall elect four of its members as members of the Executive Committee. As designated by the Board, two of the Executive Committee members so elected shall hold office as such members until the date of the annual meeting of the Board held in 1964 and the other two members so elected shall hold such office until the annual meeting of the Board held in 1965.

(d) Any person elected as a member of the Executive Committee to fill a vacancy occurring prior to the expiration of the term for which his predecessor was elected shall be elected for the remainder of such term.

(e) The functions conferred upon the Executive Committee now existing under the provisions of the National Science Foundation Act of 1950 [this chapter], by the provisions of section 6 of the National Science Foundation Act of 1950 (42 U.S.C. 1865 [section 1865 of this title]), or otherwise, are hereby transferred to the Executive Committee established by the provisions of this Part; and the authority of the National Science Board to assign its powers and functions to the now existing Executive Committee, and statutory limitations upon such assignment, shall hereafter be applicable to the Executive Committee established by the provisions of this Part.

Sec. 22. Director. (a) There is hereby established in the National Science Foundation a new office with the title of Director of the National Science Foundation. The Director of the National Science Foundation, hereafter in this Part referred to as the Director, shall be appointed by the President by and with the advice and consent of the Senate. Before any person is appointed as Director the President shall afford the Board an opportunity to make recommendations to him with respect to such appointment. The Director shall serve for a term of six years unless sooner removed by the President. The Director shall not engage in any business, vocation or employment other than that of serving as such Director, nor shall he, except with the approval of the Board, hold any office in, or act in any capacity for, any organization, agency, or institution with which the Foundation makes any contract or other arrangement under the National Science Foundation Act of 1950 [this chapter].

(b) Except to the extent inconsistent with the provisions of section 23(b) (2) of this reorganization plan, all functions of the office of Director of the National Science Foundation abolished by the provisions of 23(a) (2) hereof are hereby transferred to the office of Director established by the provisions of subsection (a) of this section.

(c) The Director, ex officio, shall be an additional member of the Board and, except in respect of compensation and tenure, shall be coordinate with other members of the Board. He shall be a voting member of the Board and shall be eligible for election by the Board as chairman or vice chairman of the Board.

Sec. 23. Abolitions. (a) The following agencies, now existing under the National Science Foundation Act of 1950 [this chapter], are hereby abolished:

(1) The Executive Committee of the National Science Board (section 6 of Act; 42 U.S.C. 1865 [section 1835 of this title]).

(2) The office of Director of the National Science Foundation (sections 2 and 5 of Act; 42 U.S.C. 1861, 1864 [sections 1861, 1864 of this title]).

(b) There are also hereby abolished:

(1) The functions conferred upon the National Science Board by that part of section 6(a) of the National Science Foundation Act of 1950 (42 U.S.C. 1865(a) [section 1865(a) of this title]) which reads "The Board is authorized to appoint from among its members an Executive Committee".

(2) The functions of the Director of the National Science Foundation provided for in sections 4(a) and 5(a) of the National Science Foundation Act of 1950 (42 U.S.C. 1863(a), 1864(a) [sections 1863(a), 1864(a) of this title]) with respect to serving as a nonvoting member of the Board and his functions with respect to serving as a nonvoting member of the Executive Committee provided for in section 6(b) of that Act (42 U.S.C. 1865(b) [section 1865(b) of this title]).

(3) So much of the functions conferred upon divisional committees by the provi-

sions of section 8(d) of the National Science Foundation Act of 1950 (42 U.S.C. 1867(d) [section 1867(d) of this title]) as consists of making recommendations to, and advising and consulting with, the Board.

(c) The provisions of sections 23(a) (1) and 23(b) (1) hereof shall become effective on the date of the first meeting of the Board held after the effective date of the other provisions of this reorganization plan.

PART III. TRANSITIONAL PROVISIONS

Sec. 31. **Incidental transfers.** (a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available, in connection with the functions transferred by the provisions of section 3 of this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred to the Office of Science and technology at such time or times as the said Director shall direct.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

Sec. 32. **Interim officers.** (a) The President may authorize any person who immediately prior to the effective date of Part I of this reorganization plan holds a position in the Executive Office of the President to act as Director of the Office of Science and Technology until the office of Director is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may authorize any person who immediately prior to the effective date of section 22 of this reorganization plan holds any office existing under the provisions of the National Science Foundation Act of 1950 [this chapter] to act as Director of the National Science Foundation until the Office of Director is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

§ 1862. Functions; reports

(a) The Foundation is authorized and directed—

(1) to develop and encourage the pursuit of a national policy for the promotion of basic research and education in the sciences;

(2) to initiate and support basic scientific research and programs to strengthen scientific research potential in the mathematical, physical, medical, biological, engineering, and other sciences, by making contracts or other arrangements (including grants, loans, and other forms of assistance) to support such scientific activities and to appraise the impact of research upon industrial development and upon the general welfare;

(3) at the request of the Secretary of Defense, to initiate and support specific scientific research activities in connection with matters relating to the national defense by making contracts or other arrangements (including grants, loans, and other forms of assistance) for the conduct of such scientific research;

(4) to award, as provided in section 1869 of this title, scholarships and graduate fellowships in the mathematical, physical, medical, biological, engineering, and other sciences;

(5) to foster the interchange of scientific information among scientists in the United States and foreign countries;

(6) to evaluate scientific research programs undertaken by agencies of the Federal Government, and to correlate the Foundation's scientific research programs with those undertaken by individuals and by public and private research groups;

(7) to establish such special commissions as the Board may from time to time deem necessary for the purposes of this chapter;

(8) to maintain a register of scientific and technical personnel and in other ways provide a central clearinghouse for information covering all scientific and technical personnel in the United States, including its Territories and possessions;

(9) to initiate and support a program of study, research, and evaluation in the field of weather modification, giving particular attention to areas that have experienced floods, drought, hail, lightning, fog, tornadoes, hurricanes, or other weather phenomena, and to report annually to the President and the Congress thereon.

(b) In exercising the authority and discharging the functions referred to in subsection (a) of this section, it shall be one of the objectives of the Foundation to strengthen basic research and education in the sciences, including independent research by individuals, throughout the United States, including its Territories and possessions, and to avoid undue concentration of such research and education.

(c) The Foundation shall render an annual report to the President for submission on or before the 15th day of January of each year to the Congress, summarizing the activities of the Foundation and making such recommendations as it may deem appropriate. Such report shall include (1) minority views and recommendations if any, of members of the Board, and (2) information as to the acquisition and disposition by the Foundation of any patents and patent rights. May 10, 1950, c. 171, § 3, 64 Stat. 149; July 11, 1958, Pub.L. 85–510, § 1, 72 Stat. 353; Sept. 8, 1959, Pub.L. 86–232, § 1, 73 Stat. 467.

Library references: United States ⇐41; C.J.S. United States § 41.

Historical Note

1959 Amendment. Subsec. (a) (2). Pub.L. 86–232 clarified Foundation's authority to support programs to strengthen scientific research potential.

1958 Amendment. Subsec. (a) (9). Pub.L. 85–510 added subsec. (a) (9).

Transfer of Functions. Transfer of those functions under subsection (a) (1)

of this section from the Foundation to the Director of the Office of Science and Technology as will enable him to advise and assist the President in achieving coordinated Federal policies for the promotion of basic research and education in the sciences, see section 3(a) (1) of 1962 Reorg.Plan No. 2, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, set out as a note under section 1861 of this title.

Functions under subsection (a) (6) of this section relating to evaluation of scientific research programs undertaken by agencies of the Federal Government transferred to the Director of the Office of Science and Technology by section 3 (a) (2) of 1962 Reorg.Plan No. 2, set out as a note under section 1861 of this title.

Investigation of Need for Geophysical Institute in Territory of Hawaii. Joint Res. Aug. 1, 1956, c. 865, 70 Stat. 922, directed the National Science Foundation to conduct an investigation into the need for and the feasibility and usefulness of a geophysical institute located in in the Territory of Hawaii, and to report the results of its investigations, together with its recommendations based thereon, to the Congress not later than nine months after Aug. 1, 1956.

Emergency Preparedness Functions. Ex.Ord.No.11095, Feb. 26, 1963, 28 F.R. 1859, directed the Director of the National Science Foundation to prepare national emergency plans and develop preparedness programs covering functions assigned to him by the Executive Order, designed to develop a state of readiness with respect to all conditions of national emergency, including attack upon the United States.

Legislative History: For legislative history and purpose of Pub.L. 85-510, see 1958 U.S.Code Cong. and Adm.News, p. 3012. See, also, Pub.L. 86-232, 1959 U.S. Code Cong. and Adm.News, p. 2241.

EXECUTIVE ORDER NO. 10521

Mar. 17, 1954, 19 F.R. 1499, as amended by Ex.Ord.No.10807, § 6(b), Mar. 13, 1959, 24 F.R. 1899

ADMINISTRATION OF SCIENTIFIC RESEARCH

Section 1. The National Science Foundation (hereinafter referred to as the Foundation) shall from time to time recommend to the President policies for the promotion and support of basic research and education in the sciences, including policies with respect to furnishing guidance toward defining the responsibilities of the Federal Government in the conduct and support of basic scientific research.

Sec. 2. The Foundation shall continue to make comprehensive studies and recommendations regarding the Nation's scientific research effort and its resources for scientific activities, including facilities and scientific personnel, and its foreseeable scientific needs, with particular attention to the extent of the Federal Government's activities and the resulting effects upon trained scientific personnel. In making such studies, the Foundation shall make full use of existing sources of information and research facilities within the Federal Government.

Sec. 3. The Foundation, in concert with each Federal agency concerned, shall review the basic scientific research programs and activities of the Federal Government in order, among other purposes, to formulate methods for strengthening the administration of such programs and activities by the responsible agencies, and to study areas of basic research where gaps or undesirable overlapping of support may exist, and shall recommend to the heads of agencies concerning the support given to basic research.

Sec. 4. As now or hereafter authorized or permitted by law, the Foundation shall be increasingly responsible for providing support by the Federal Government for general-purpose basic research through contracts and grants. The conduct and support by other Federal agencies of basic research in areas which are closely related to their missions is recognized as important and desirable, especially in response to current national needs, and shall continue.

Sec. 5. The Foundation, in consultation with educational institutions, the heads of Federal agencies, and the Commissioner of Education of the Department of Health, Education, and Welfare, shall study the effects upon educational institutions of Federal policies and administration of contracts and grants for scientific research and development, and shall recommend policies and procedures which will promote the attainment of general national research objectives and realization of the research needs of Federal agencies while safeguarding the strength and independence of the Nation's institutions of learning.

Sec. 6. The head of each Federal agency engaged in scientific research shall make certain that effective executive, organizational, and fiscal practices exist to ensure (a) that the Foundation is consulted on policies concerning the support of basic research, (b) that approved scientific research programs conducted by the agency are reviewed continuously in order to preserve priorities in research efforts and to adjust programs to meet changing conditions without imposing unnecessary added burdens on budgetary and other resources, (c) that applied research and development shall be undertaken with sufficient consideration of the underlying basic research and such other factors as relative urgency, project costs, and availability of manpower and facilities, and (d) that, subject to considerations of security and applicable law, adequate dissemination shall be made within the Federal Government of reports on the nature and progress of research projects as an aid to the efficiency and economy of the overall Federal scientific research program.

Sec. 7. Federal agencies supporting or engaging in scientific research shall, with the assistance of the Foundation, cooperate in an effort to improve the methods of classification and reporting of scientific research projects and activities, subject to the requirements of security of information.

Sec. 8. To facilitate the efficient use of scientific research equipment and facilities held by Federal agencies:

(a) the head of each such agency engaged in scientific research shall, to the extent practicable, encourage and facilitate the sharing with other Federal agencies of major equipment and facilities; and

(b) a Federal agency shall procure new major equipment or facilities for scientific research purposes only after taking suitable steps to ascertain that the need cannot be met adequately from existing inventories or facilities of its own or of other agencies.

(c) the Interdepartmental Committee on Scientific Research and Development shall take necessary steps to ensure that each Federal agency engaged directly in scientific research is kept informed of selected major equipment and facilities which could serve the needs of more than one agency. Each Federal agency possessing such equipment and facilities shall maintain appropriate records to assist other agencies in arranging for their joint use or exchange.

Sec. 9. The heads of the respective Federal agencies shall make such reports concerning activities within the purview of this order as may be required by the President.

Sec. 10. The National Science Foundation shall provide leadership in the effective coordination of the scientific information activities of the Federal Government with a view to improving the availability and dissemination of scientific information. Federal agencies shall cooperate with and assist the National Science Foundation in the performance of this function, to the extent permitted by law.

EXECUTIVE ORDER NO. 10807

Mar. 13, 1959, 24 F.R. 1897

FEDERAL COUNCIL FOR SCIENCE AND TECHNOLOGY

Section 1. Establishment of Council. (a) There is hereby established the Federal Council for Science and Technology (hereinafter referred to as the Council).

(b) The Council shall be composed of the following-designated members: (1) the Special Assistant to the President for Science and Technology, (2) one representative of each of the following-named departments, who shall be designated by the Secretary of the Department concerned and shall be an official of the Department of policy rank: the Departments of Defense, the Interior, Agriculture, Commerce, and Health, Education, and Welfare, (3) the Director of the National Science Foundation, (4) the Administrator of the National Aeronautics and Space Administration, and (5) a representative of the Atomic Energy Commission, who shall be the Chairman of the Commission or another member of the Commission designated by the Chairman. A representative of the Secretary of State designated by the Secretary and a representative of the Director of the Bureau of the Budget designated by the Director may attend meetings of the Council as observers.

(c) The Chairman of the Council (hereinafter referred to as the Chairman) shall be designated by the President from time to time from among the members thereof. The Chairman may make provision for another member of the Council, with the consent of such member, to act temporarily as Chairman.

(d) The Chairman (1) may request the head of any Federal agency not named in section 2(b) of this order to designate a representative to participate in meetings or parts of meetings of the Council concerned with matters of substantial interest to the agency, and (2) may invite other persons to attend meetings of the Council.

(e) The Council shall meet at the call of the Chairman.

Sec. 2. Functions of Council. (a) The Council shall consider problems and developments in the fields of science and technology and related activities affecting more than one Federal agency or concerning the over-all advancement of the Nation's science and technology, and shall recommend policies and other measures (1) to provide more effective planning and administration of Federal scientific and technological programs, (2) to identify research needs including areas of research requiring additional emphasis, (3) to achieve more effective utilization of the scientific and technological resources and facilities of Federal agencies, including the elimination of unnecessary duplication, and (4) to further international cooperation in science and technology. In developing such policies and measures the Council, after consulting, when considered appropriate by the Chairman, the National Academy of Sciences, the President's Science Advisory Committee, and other organizations, shall consider (i) the effects of Federal research and development policies and programs on non-Federal programs and institutions, (ii) long-range program plans designed to meet the scientific and technological needs of the Federal Government, including manpower and capital requirements, and (iii) the effects of non-Federal programs in science and technology upon Federal research and development policies and programs.

(b) The Council shall consider and recommend measures for the effective implementation of Federal policies concerning the administration and conduct of Federal programs in science and technology.

(c) The Council shall perform such other related duties as shall be assigned, consonant with law, by the President or by the Chairman.

(d) The Chairman shall, from time to time, submit to the President such of the Council's recommendations or reports as require the attention of the President by reason of their importance or character.

Sec. 3. Agency assistance to Council. (a) For the purpose of effectuating this order, each Federal agency represented on the Council shall furnish necessary assistance to the Council in consonance with section 214 of the act of May 3, 1945, 59 Stat. 134 (31 U.S.C.A. § 691). Such assistance may include (1) detailing employees to the Council to perform such functions, consistent with the purposes of this order, as the Chairman may assign to them, and (2) undertaking, upon request of the Chairman, such special studies for the Council as come within the functions herein assigned to the Council.

(b) Upon request of the Chairman, the heads of Federal agencies shall, so far as practicable, provide the Council with information and reports relating to the scientific and technological activities of the respective agencies.

Sec. 4. Standing committees and panels. For the purpose of conducting studies and making reports as directed by the Chairman, standing committees and panels of the Council may be established in consonance with the provisions of section 214 of the act of May 3, 1945, 59 Stat. 134 (31 U.S.C.A. § 691). At least one such standing committee shall be composed of scientist-administrators representing Federal agencies, shall provide a forum for consideration of common administrative policies and procedures relating to Federal research and development activities and for formulation of recommendations thereon, and shall perform such other related functions as may be assigned to it by the Chairman of the Council.

Sec. 5. Security procedures. The Chairman shall establish procedures to insure the security of classified information used by or in the custody of the Council or employees under its jurisdiction.

Sec. 6. Other orders; construction of orders. (a) Executive Order No. 9912 of December 24, 1947, entitled "Establishing the Interdepartmental Committee on Scientific Research and Development," is hereby revoked.

(b) Executive Order No. 10521 of March 17, 1954 [set out as a note under this section] entitled "Administration of Scientific Research by Agencies of the Federal Government," is hereby amended:

(1) By substituting for section 1 thereof the following:

"Section 1. The National Science Foundation (hereinafter referred to as

the Foundation) shall from time to time recommend to the President policies for the promotion and support of basic research and education in the sciences, including policies with respect to furnishing guidance toward defining the responsibilities of the Federal Government in the conduct and support of basic scientific research."

(2) By inserting before the words "scientific research programs and activities" in section 3 thereof the word "basic".

(3) (1) By adding the word "and" at the end of paragraph (a) of section 8 thereof, (ii) by deleting the semicolon and the word "and" at the end of paragraph (b) of section 8 and inserting in lieu thereof a period, and (iii) by revoking paragraph (c) of section 8.

(4) By adding at the end of the order a new section 10 reading as follows:

"Sec. 10. The National Science Foundation shall provide leadership in the effective coordination of the scientific information activities of the Federal Government with a view to improving the availability and dissemination of scientific information. Federal agencies shall cooperate with and assist the National Science Foundation in the performance of this function, to the extent permitted by law."

(c) The provisions of Executive Order No. 10521, as hereby amended, shall not limit the functions of the Council under this order. The provisions of this order shall not limit the functions of any Federal agency or officer under Executive Order No. 10521, as hereby amended.

(d) The Council shall be advisory to the President and to the heads of Federal agencies represented on the Council; accordingly, this order shall not be construed as subjecting any agency, officer, or function to control by the Council.

DWIGHT D. EISENHOWER

Functions as Not Limited. Section 6(c) of Ex.Ord.No.10807, set out as a note under this section, provided that Ex.Ord. No. 10521 should not limit functions of Federal Council for Science and Technology under Ex.Ord.No.10807, and that Ex.Ord.No.10807 should not limit functions of any agency or officer under Ex. Ord.No.10521.

§ 1863. National Science Board—Composition; appointment; qualifications

(a) The Board shall consist of twenty-four members to be appointed by the President, by and with the advice and consent of the Senate, and of the Director ex officio, and shall, except as otherwise provided in this chapter, exercise the authority granted to the Foundation by this chapter. The persons nominated for appointment as members (1) shall be eminent in the fields of the basic sciences, medical science, engineering, agriculture, education, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific leaders in all areas of the Nation. The President is requested, in the making of nominations of persons for appointment as members, to give due consideration to any recommendations for nomination which may be submitted to him by the National Academy of Sciences, the Association of Land Grant Colleges and Universities, the National Association of State Universities, the Association of American Colleges, or by other scientific or educational organizations.

Term of office

(b) The term of office of each voting member of the Board shall be six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office

after May 10, 1950, shall expire, as designated by the President at the time of appointment, eight at the end of two years, eight at the end of four years, and eight at the end of six years, after May 10, 1950. Any person who has been a member of the Board for twelve consecutive years shall thereafter be ineligible for appointment during the two-year period following the expiration of such twelfth year.

(c) Executed

Meetings

(d) The Board shall meet annually on the third Monday in May, unless, prior to May 10 in any year, the Chairman has set the annual meeting for a day in May, other than the third Monday, and at such other times as the Chairman may determine, but he shall also call a meeting whenever one-third of the members so request in writing. A majority of the voting members of the Board shall constitute a quorum. Each member shall be given notice, by registered mail or by certified mail mailed to his last known address of record not less than fifteen days prior to any meeting, of the call of such meeting.

Election of Chairman and Vice Chairman; term; vacancy

(e) An election of the Chairman and Vice Chairman of the Board shall take place at the first meeting of the National Science Board following enactment of this legislation. Thereafter such election shall take place at the second annual meeting occurring after each such election. The Vice Chairman shall perform the duties of the Chairman in his absence. In case a vacancy occurs in the chairmanship or vice chairmanship, the Board shall elect a member to fill such vacancy. May 10, 1950, c. 171, § 4, 64 Stat. 150; Sept. 8, 1959, Pub.L. 86–232, § 2, 73 Stat. 467; June 11, 1960, Pub.L. 86–507, § 1(36), 74 Stat. 202.

Library references: United States ⇐35; C.J.S. United States §§ 35, 37, 62–64.

Historical Note

References in Text. "Enactment of this legislation", referred to in subsec. (e), means enactment of Pub.L. 86–232, which was approved on Sept. 8, 1959.

Codification. Subsec. (c) provided that "The President shall call the first meeting of the Board, at which the first order of business shall be the election of a chairman and a vice chairman" and is now covered by subsec. (e) of this section.

1960 Amendment. Subsec. (d). Pub.L. 86–507 inserted "or by certified mail" following "registered mail."

1959 Amendment. Subsec. (d). Pub.L. 86–232 changed the annual meeting of the Board from the first Monday in December to the third Monday or other designated day in May.

Subsec. (e). Pub.L. 86–232 substituted provision for an election of a Chairman and Vice Chairman of the Board at the first meeting of the Board following enactment of Pub.L. 86–232 and at each second annual meeting thereafter for provision for election of the first Chairman and Vice Chairman to serve until the first Monday in December next succeeding the date of election and for election of subsequent officers for terms of two years thereafter.

Legislative History: For legislative history and purpose of Pub.L. 86–232, see 1959 U.S.Code Cong and Adm.News, p. 2241. See, also, Pub.L. 86–507, 1960 U.S.Code Cong. and Adm.News, p. 2356.

§ 1864. Director of Foundation; appointment; tenure; powers and duties

(a) There shall be a Director of the Foundation who shall be appointed by the President, by and with the advice and consent of the Senate. The Board may make recommendations to the President with respect to the appointment of the Director, and the Director shall not be appointed until the Board has had an opportunity to make such recommendations. He shall serve as a nonvoting ex officio member of the Board. In addition thereto he shall be the chief executive officer of the Foundation. The Director shall serve for a term of six years unless sooner removed by the President.

(b) In addition to the powers and duties specifically vested in him by this chapter, the Director shall, in accordance with the policies established by the Board, exercise the powers granted by sections 1869 and 1870 of this title, together with such other powers and duties as may be delegated to him by the Board; but no final action shall be taken by the Director in the exercise of any power granted by section 1869 or 1870(c) of this title unless in each instance the Board has reviewed and approved the action proposed to be taken, or such action is taken pursuant to the terms of a delegation of authority from the Board or the Executive Committee to the Director. May 10, 1950, c. 171, § 5, 64 Stat. 151; July 31, 1956, c. 804, Title I, § 106(a), 70 Stat. 738; Sept. 8, 1959, Pub.L. 86–232, § 3, 73 Stat. 467.

Library references: United States ⇐41; C.J.S. United States § 41.

Historical Note

Codification. Provisions of this section which prescribed the annual compensation of the Director were omitted to conform to the provisions of Act July 31, 1956, and are now covered by section 2205(a) of Title 5, Executive Departments and Government Officers and Employees.

1959 Amendment. Subsec. (b). Pub.L. 86–232 provided for delegation of authority from the Board or the Executive Committee to the Director.

Transfer of Functions. Office of Director of National Science Foundation established under the provisions of this section abolished and functions transferred to Director of National Science Foundation appointed pursuant to 1962 Reorg.Plan No. 2, see section 22(a), (b) of 1962 Reorg.Plan No. 2, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, set out as a note under section 1861 of this title.

Legislative History: For legislative history and purpose of Pub.L. 86–232, see 1959 U.S.Code Cong. and Adm.News, p. 2241.

§ 1865. Power of Board to create committees—Executive Committee; assignment of powers and functions; exception

(a) The Board is authorized to appoint from among its members an Executive Committee, and to assign to the Executive Committee such of the powers and functions granted to the Board by this chapter as it deems appropriate; except that the Board may not assign to the Executive Committee the function of establishing policies.

Executive Committee; composition; term of office; eligibility for renomination; representation of diverse interests; reports

(b) If an Executive Committee is established by the Board—

(1) Such Committee shall consist of the Director, as a nonvoting ex officio member, and not less than five nor more than nine other members elected by the Board from among their number.

(2) The term of office of each voting member of such Committee shall be two years, except that (A) any member elected to fill a vacancy occurring prior to the expiration of the term for which his predecessor was elected shall be elected for the remainder of such term; and (B) the term of office of four of the members first elected after May 10, 1950, shall be one year.

(3) Any person who has been a member of such Committee for six consecutive years shall thereafter be ineligible for election during the two-year period following the expiration of such sixth year.

(4) The membership of such Committee shall, so far as practicable, be representative of diverse interests and shall be so chosen as to provide representation, so far as practicable, for all areas of the Nation.

(5) Such Committee shall render an annual report to the Board, and such other reports as it may deem necessary, summarizing its activities and making such recommendations as it may deem appropriate. Minority views and recommendations, if any, of members of the Executive Committee shall be included in such reports.

Additional committees

(c) The Board is authorized to appoint from among its members or otherwise such committees as it deems necessary, and to assign to committees so appointed such survey and advisory functions as the Board deems appropriate for the purposes of this chapter. May 10, 1950, c. 171, § 6, 64 Stat. 151; Sept. 8, 1959, Pub.L. 86–232, § 4, 73 Stat. 467.

Library references: United States ⇐36; C.J.S. United States §§ 36, 37, 62–64.

Historical Note

1959 Amendment. Subsec. (a). Pub.L. 86–232 eliminated prohibition against assignment to the Executive Committee of the function of review and approval.

Subsec. (b) (1). Pub.L. 86–232 authorized the Board to have an Executive Committee consisting of from five to nine members rather than the fixed number of nine.

Transfer of Functions. Executive Committee of National Science Board appointed under the provisions of this section abolished and functions conferred by this section transferred to Executive Committee of National Science Board established by 1962 Reorg.Plan No. 2, see sections 21(c) and 23(a) (1) of 1962 Reorg. Plan No. 2, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, set out as a note under section 1861 of this title.

Legislative History: For legislative history and purpose of Pub.L. 86–232, see 1959 U.S.Code Cong. and Adm.News, p. 2241.

§ 1866. Divisions within Foundation

(a) Until otherwise provided by the Board there shall be within the Foundation the following divisions:

(1) A Division of Medical Research;

(2) A Division of Mathematical, Physical, and Engineering Sciences;

(3) A Division of Biological Sciences; and

(4) A Division of Scientific Personnel and Education, which shall be concerned with programs of the Foundation relating to the granting of scholarships and graduate fellowships in the mathematical, physical, medical, biological, engineering, and other sciences.

(b) There shall also be within the Foundation such other divisions as the Board may, from time to time, deem necessary. May 10, 1950, c. 171, § 7, 64 Stat. 152.

Historical Note

Biological and Medical Sciences. Division of Medical Research and Division of Biological Sciences were combined into the Division of Biological and Medical Sciences.

§ 1867. Divisional committees; composition; terms of office; chairmen; rules; duties; recommendations

(a) There shall be a committee for each division of the Foundation.

(b) Each divisional committee shall be appointed by the Board and shall consist of not less than five persons who may be members or nonmembers of the Board.

(c) The terms of members of each divisional committee shall be two years. Each divisional committee shall annually elect its own chairman from among its own members and shall prescribe its own rules of procedure subject to such restrictions as may be prescribed by the Board.

(d) Each divisional committee shall make recommendations to, and advise and consult with, the Board and the Director with respect to matters relating to the program of its division. May 10, 1950, c. 171, § 8, 64 Stat. 152.

§ 1868. Special commissions; composition; chairman and vice chairman; duties

(a) Each special commission established pursuant to section 1862(a) (7) of this title shall consist of eleven members appointed by the Board, six of whom shall be eminent scientists and five of whom shall be persons other than scientists. Each special commission shall choose its own chairman and vice chairman.

(b) It shall be the duty of each such special commission to make a comprehensive survey of research, both public and private, being carried on in its field, and to formulate and recommend to the Foundation at the earliest practicable date an over-all research program in its field. May 10, 1950, c. 171, § 9, 64 Stat. 152.

§ 1869. Scholarships and graduate fellowships

The Foundation is authorized to award, within the limits of funds made available specifically for such purpose pursuant to section 1875 of this title, scholarships and graduate fellowships for scientific study or scientific work in the mathematical, physical, medical, biological, engineering, and other sciences at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time. Persons shall be selected for such scholarships and fellowships from among citizens or nationals of the United States, and such selections shall be made solely on the basis of ability; but in any case in which two or more applicants for scholarships or fellowships, as the case may be, are deemed by the Foundation to be possessed of substantially equal ability, and there are not sufficient scholarships or fellowships, as the case may be, available to grant one to each of such applicants, the available scholarship or scholarships or fellowship or fellowships shall be awarded to the applicants in such manner as will tend to result in a wide distribution of scholarships and fellowships among the States, Territories, possessions, and the District of Columbia. Nothing contained in this chapter shall prohibit the Foundation from refusing or revoking a scholarship or fellowship award, in whole or in part, in the case of any applicant or recipient, if the Board is of the opinion that such award is not in the best interests of the United States. May 10, 1950, c. 171, § 10, 64 Stat. 152; Sept. 8, 1959, Pub.L. 86–232, § 5, 73 Stat. 468; June 29, 1960, Pub.L. 86–550, 74 Stat. 256; Oct. 16, 1962, Pub.L. 87–835, § 2, 76 Stat. 1070.

Library references: Colleges and Universities ⇐9; C.J.S. Colleges and Universities § 24 et seq.

Historical Note

1962 Amendment. Pub.L. 87–835 authorized the Foundation to refuse or revoke a scholarship or fellowship award if they believe such award is not in the best interests of the United States.

1960 Amendment. Pub.L. 86–550 authorized the selection of nationals for scholarships and fellowships.

1959 Amendment. Pub.L. 86–232 substituted "appropriate" for "accredited" and deleted "of higher education" following "foreign institutions".

Legislative History: For legislative history and purpose of Pub.L. 86–232, see 1959 U.S.Code Cong. and Adm.News, p. 2241. See, also, Pub.L. 86–550, 1960 U.S. Code Cong. and Adm.News, p. 2474; Pub. L. 87–835, 1962 U.S.Code Cong. and Adm. News, p. 3771.

§ 1870. General authority of Foundation

The Foundation shall have the authority, within the limits of available appropriations, to do all things necessary to carry out the provisions of this chapter, including, but without being limited thereto, the authority—

(a) to prescribe such rules and regulations as it deems necessary governing the manner of its operations and its organization and personnel;

(b) to make such expenditures as may be necessary for administering the provisions of this chapter;

(c) to enter into contracts or other arrangements, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such basic scientific research activities as the Foundation deems necessary to carry out the purposes of this chapter, and, at the request of the Secretary of Defense, specific scientific research activities in connection with matters relating to the national defense, and, when deemed appropriate by the Foundation, such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 5 of Title 41;

(d) to make advance, progress, and other payments which relate to scientific research without regard to the provisions of section 529 of Title 31;

(e) to acquire by purchase, lease, loan, gift, or condemnation, and to hold and dispose of by grant, sale, lease, or loan, real and personal property of all kinds necessary for, or resulting from, the exercise of authority granted by this chapter;

(f) to receive and use funds donated by others, if such funds are donated without restriction other than that they be used in furtherance of one or more of the general purposes of the Foundation;

(g) to publish or arrange for the publication of scientific and technical information so as to further the full dissemination of information of scientific value consistent with the national interest, without regard to the provisions of section 111 of Title 44;

(h) to accept and utilize the services of voluntary and uncompensated personnel and to provide transportation and subsistence as authorized by section 73b–2 of Title 5 for persons serving without compensation; and

(i) to prescribe, with the approval of the Comptroller General of the United States, the extent to which vouchers for funds expended under contracts for scientific research shall be subject to itemization or substantiation prior to payment, without regard to the

limitations of other laws relating to the expenditure of public funds and accounting therefor. May 10, 1950, c. 171, § 11, 64 Stat. 153; Sept. 8, 1959, Pub.L. 86–232, § 6, 73 Stat. 468.

Library references: United States ⇐53(6); C.J.S. United States § 65 et seq.

Historical Note

1959 Amendment. Subsec. (e). Pub.L. 86–232 included acquisition of property by condemnation and disposition of property by grant.

Legislative History: For legislative history and purpose of Pub.L. 86–232, see 1959 U.S.Code Cong. and Adm.News, p. 2241.

§ 1871. Patent rights; protection of public interest or equities of individuals or organizations; employees barred

(a) Each contract or other arrangement executed pursuant to this chapter which relates to scientific research shall contain provisions governing the disposition of inventions produced thereunder in a manner calculated to protect the public interest and the equities of the individual or organization with which the contract or other arrangement is executed: *Provided, however,* That nothing in this chapter shall be construed to authorize the Foundation to enter into any contractual or other arrangement inconsistent with any provision of law affecting the issuance or use of patents.

(b) No officer or employee of the Foundation shall acquire, retain, or transfer any rights, under the patent laws of the United States or otherwise, in any invention which he may make or produce in connection with performing his assigned activities and which is directly related to the subject matter thereof: *Provided, however,* That this subsection shall not be construed to prevent any officer or employee of the Foundation from executing any application for patent on any such invention for the purpose of assigning the same to the Government or its nominee in accordance with such rules and regulations as the Director may establish. May 10, 1950, c. 171, § 12, 64 Stat. 154.

Library references: Patents ⇐3; C.J.S. Patents § 3.

Historical Note

References in Text. Patent laws of the United States, referred to in subsec. (b), are set out in Title 35, Patents.

§ 1872. International cooperation and coordination with foreign policy

(a) The Foundation is authorized to cooperate in any international scientific activities consistent with the purposes of this chapter and to expend for such international scientific activities such sums within the limit of appropriated funds as the Foundation may deem de-

sirable. The Director, with the approval of the Board, may defray the expenses of representatives of Government agencies and other organizations and of individual scientists to accredited international scientific congresses and meetings whenever he deem [1] it necessary in the promotion of the objectives of this chapter. In this connection, with the approval of the Secretary of State, the Foundation may undertake programs granting fellowships to, or making other similar arrangements with, foreign nationals for scientific study or scientific work in the United States without regard to section 1869 of this title or the affidavit of allegiance to the United States required by section 1874(d) (2) of this title.

(b) (1) The authority to enter into contracts or other arrangements with organizations or individuals in foreign countries and with agencies of foreign countries, as provided in section 1870(c) of this title, and the authority to cooperate in international scientific activities as provided in subsection (a) of this section, shall be exercised only with the approval of the Secretary of State, to the end that such authority shall be exercised in such manner as is consistent with the foreign policy objectives of the United States.

(2) If, in the exercise of the authority referred to in paragraph (1) of this subsection, negotiation with foreign countries or agencies thereof becomes necessary, such negotiation shall be carried on by the Secretary of State in consultation with the Director. May 10, 1950, c. 171, § 13, 64 Stat. 154; Sept. 8, 1959, Pub.L. 86–232, § 7, 73 Stat. 468.

[1] So in original.

Library references: International Law ⇔10.45; C.J.S. International Law § 17.

Historical Note

1959 Amendment. Subsec. (a). Pub.L. 86–232 permitted the Foundation, with approval of the Secretary of State, to cooperate in scientific activities rather than scientific research activities, and to grant fellowships or make other arrangements with foreign nationals for scientific study or scientific work in the United States.

Subsec. (b) (1). Pub.L. 86–232 deleted "research" from the phrase "scientific research activities."

Legislative History: For legislative history and purpose of Pub.L. 86–232, see 1959 U.S.Code Cong. and Adm.News, p. 2241.

§ 1872a. Weather modification—Consultations

(a) In carrying out the provisions of section 1862(a) (9) of this title, the Foundation shall consult with meteorologists and scientists in private life and with agencies of Government interested in, or affected by, experimental research in the field of weather control.

Research programs

(b) Research programs to carry out the purposes of section 1862 (a) (9) of this title, whether conducted by the Foundation or by other Government agencies or departments, may be accomplished through contracts with, or grants to, private or public institutions or agen-

cies, including but not limited to cooperative programs with any State through such instrumentalities as may be designated by the governor of such State.

Acceptance of gifts

(c) For the purposes of section 1862(a) (9) of this title, the Foundation is authorized to accept as a gift, money, material, or services: *Provided*, That notwithstanding section 1870(f) of this title, use of any such gift, if the donor so specifies, may be restricted or limited to certain projects or areas.

Loan of property

(d) For the purposes of section 1862(a) (9) of this title, other agencies of the Government are authorized to loan to the Foundation without reimbursement, and the Foundation is authorized to accept and make use of, such property and personnel as may be deemed useful, with the approval of the Director of the Bureau of the Budget.

Hearings; oaths or affirmations

(e) The Director of the Foundation, or any employee of the Foundation designated by him, may for the purpose of carrying out the provisions of section 1862(a) (9) of this title hold such hearings and sit and act at such times and places and take such testimony as he shall deem advisable. The Director or any employee of the Foundation designated by him may administer oaths or affirmations to witnesses appearing before the Director or such employee.

Documentary evidence; contempt; enforcement of subpena; jurisdiction; witness fees; violations and penalties; public records

(f) (1) The Director of the Foundation may obtain by regulation, subpena, or otherwise such information in the form of testimony, books, records, or other writings, may require the keeping of and furnishing such reports and records, and may make such inspections of the books, records, and other writings and premises or property of any person or persons as may be deemed necessary or appropriate by him to carry out the provisions of section 1862(a) (9) of this title, but this authority shall not be exercised if adequate and authoritative data are available from any Federal agency. In case of contumacy by, or refusal to obey a subpena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the Director, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(2) The production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person usually keeps them, if, prior to the return

rate specified in the regulations, subpena, or other document issued with respect thereto, such person furnishes the Foundation with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the Director as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(3) Any person who willfully performs any act prohibited or willfully fails to perform any act required by the above provisions of this subsection, or any regulation issued thereunder, shall upon conviction be fined not more than $500.

(4) Information contained in any statement, report, record, or other document furnished pursuant to this subsection shall be available for public inspection, except (A) information authorized or required by statute to be withheld and (B) information classified in accordance with law to protect the national security. The foregoing sentence shall not be interpreted to authorize or require the publication, divulging, or disclosure of any information described in section 1905 of Title 18, except that the Director may disclose information described in such section 1905, furnished pursuant to this subsection, whenever he determines that the withholding thereof would be contrary to the purposes of this section and section 1862(a)(9) of this title. May 10, 1950, c. 171, § 14, as added July 11, 1958, Pub.L. 85–510, § 2, 72 Stat. 353.

Historical Note

Legislative History: For legislative history and purpose of Pub.L. 85–510, see 1958 U.S.Code Cong. and Adm.News, p. 3012.

§ 1873. Employment of personnel—Appointment and compensation

(a) The Director shall, in accordance with such policies as the Board shall from time to time prescribe, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter. Such appointments shall be made and such compensation shall be fixed in accordance with the provisions of the civil-service laws and regulations and the Classification Act of 1949: *Provided*, That the Director may, in accordance with such policies as the Board shall from time to time prescribe, employ such technical and professional personnel and fix their compensation, without regard to such laws, as he may deem necessary for the discharge of the responsibilities of the Foundation under this chapter. The Deputy Director hereinafter provided for, and the members of the divisional committees and special commissions, shall be appointed without regard to the civil-service laws or regulations. Neither the Director nor the Deputy Director shall engage in any other business, vocation, or employment than that of serving as such Director

or Deputy Director, as the case may be; nor shall the Director or Deputy Director, except with the approval of the Board, hold any office in, or act in any capacity for, any organization, agency, or institution with which the Foundation makes any contract or other arrangement under this chapter.

Deputy Director; appointment; duties

(b) The Director may appoint, with the approval of the Board, a Deputy Director who shall perform such functions as the Director, with the approval of the Board, may prescribe and shall be Acting Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

Operation of laboratories and pilot plants

(c) The Foundation shall not, itself, operate any laboratories or pilot plants.

Compensation of members of Board and divisional committees

(d) The members of the Board, and the members of each divisional committee, or special commission, shall receive compensation at the rate of $50 for each day engaged in the business of the Foundation pursuant to authorization of the Foundation and shall be allowed travel expenses as authorized by section 73b–2 of Title 5.

Federal officers as members of divisional committees and special commissions

(e) Persons holding other offices in the executive branch of the Federal Government may serve as members of the divisional committees and special commissions, but they shall not receive remuneration for their services as such members during any period for which they receive compensation for their services in such other offices.

Exemption from provisions of sections 281, 283, or 284 of Title 18 and section 99 of Title 5

(f) Service of an individual as a member of the Board, of a divisional committee, or of a special commission shall not be considered as service bringing him within the provisions of sections 281, 283, or 284 of Title 18 or section 99 of Title 5, unless the act of such individual, which by such section is made unlawful when performed by an individual referred to in such section, is with respect to any particular matter which directly involves the Foundation or in which the Foundation is directly interested.

Utilization of appropriations in making contracts

(g) In making contracts or other arrangements for scientific research, the Foundation shall utilize appropriations available therefor in such manner as will in its discretion best realize the objectives of (1) having the work performed by organizations, agencies, and institutions, or individuals in the United States or foreign countries, including Government agencies of the United States and of foreign countries, qualified by training and experience to achieve

the results desired, (2) strengthening the research staff of organizations, particularly nonprofit organizations, in the States, Territories, possessions, and the District of Columbia, (3) aiding institutions, agencies, or organizations which, if aided, will advance basic research, and (4) encouraging independent basic research by individuals.

Transfer of research funds of other Government departments or agencies

(h) Funds available to any department or agency of the Government for scientific or technical research, or the provision of facilities therefor, shall be available for transfer, with the approval of the head of the department or agency involved, in whole or in part, to the Foundation for such use as is consistent with the purposes for which such funds were provided, and funds so transferred shall be expendable by the Foundation for the purposes for which the transfer was made, and, until such time as an appropriation is made available directly to the Foundation, for general administrative expenses of the Foundation without regard to limitations otherwise applicable to such funds.

Transfer of National Roster of Scientific and Specialized Personnel

(i) The National Roster of Scientific and Specialized Personnel shall be transferred from the United States Employment Service to the Foundation, together with such records and property as have been utilized or are available for use in the administration of such roster as may be determined by the President. The transfer provided for in this subsection shall take effect at such time or times as the President shall direct. May 10, 1950, c. 171, § 15, formerly § 14, 64 Stat. 154, renumbered July 11, 1958, Pub.L. 85–510, § 2, 72 Stat. 353, and amended Sept. 8, 1959, Pub.L. 86–232, § 8, 73 Stat. 469.

Historical Note

References in Text. The civil service laws, referred to in subsec. (a), are classified generally to Title 5, Executive Departments and Government Officers and Employees.

The Classification Act of 1949, referred to in subsec. (a), is classified to chapter 21 of Title 5.

1959 Amendment. Subsec. (d). Pub.L. 86–232 increased compensation from $25 to $50 per diem.

Legislative History: For legislative history and purpose of Pub.L. 86–232, see 1959 U.S.Code Cong. and Adm.News, p. 2241.

§ 1874. Security provisions—Nuclear energy research and development

(a) The Foundation shall not support any research or development activity in the field of nuclear energy, nor shall it exercise any authority pursuant to section 1870(e) of this title in respect to that field, without first having obtained the concurrence of the Atomic Energy Commission that such activity will not adversely affect the common defense and security. To the extent that such

activity involves restricted data as defined in the Atomic Energy Act of 1946 the provisions of that Act regarding the control of the dissemination of restricted data and the security clearance of those individuals to be given access to restricted data shall be applicable. Nothing in this chapter shall supersede or modify any provision of the Atomic Energy Act of 1946.

Research relating to national defense

(b) (1) In the case of scientific or technical research activities under this chapter in connection with matters relating to the national defense, with respect to which funds have been transferred to the Foundation from the Department of Defense in accordance with the provisions of section 1873(h) of this title, the Secretary of Defense shall establish such security requirements and safeguards, including restrictions with respect to access to information and property, as he deems necessary.

(2) In the case of scientific research activities under this chapter in connection with matters relating to the national defense other than research activities referred to in paragraph (1) of this subsection, the Foundation shall establish such security requirements and safeguards, including restrictions with respect to access to information and property, as it deems necessary.

(3) Any agency of the Government exercising investigatory functions is authorized to make such investigations and reports as may be requested by the Foundation in connection with the enforcement of security requirements and safeguards, including restrictions with respect to access to information and property, established under paragraph (1) or (2) of this subsection.

Clearance of personnel by Civil Service Commission

(c) No employee of the Foundation shall be permitted to have access to information or property with respect to which access restrictions have been established under subsection (b) (1) or (2) of this section until the Civil Service Commission shall have made an investigation into the character, associations, and loyalty of such individual and shall have reported the findings of said investigation to the Foundation, and the Foundation shall have determined that permitting such individual to have access to such information or property will not endanger the common defense and security.

Oath and statement prerequisite to acceptance of scholarship or fellowship; ineligibility of Communist organization members; penalties

(d) (1) No part of any funds appropriated or otherwise made available for expenditure by the Foundation under authority of this chapter shall be used to make payments under any scholarship or fellowship awarded to any individual under section 1869 of this title, unless such individual—

(A) has taken and subscribed to an oath or affirmation in the following form: "I do solemnly swear (or affirm) that I bear true faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all its enemies, foreign and domestic"; and

(B) has provided the Foundation (in the case of applications made on or after October 1, 1962) with a full statement regarding any crimes of which he has ever been convicted (other than crimes committed before attaining sixteen years of age and minor traffic violations for which a fine of $25 or less was imposed) and regarding any criminal charges punishable by confinement of thirty days or more which may be pending against him at the time of his application for such scholarship or fellowship.

The provisions of section 1001 of Title 18, shall be applicable with respect to the oath or affirmation and statement herein required.

(2) (A) When any Communist organization, as defined in section 782(5) of Title 50, is registered or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, it shall be unlawful for any member of such organization with knowledge or notice that such organization is so registered or that such order has become final (i) to make application for any scholarship or fellowship which is to be awarded from funds part or all of which are appropriated or otherwise made available for expenditure under the authority of section 1869 of this title, or (ii) to use or attempt to use any such award.

(B) Whoever violates subparagraph (A) of this paragraph shall be fined not more than $10,000, or imprisoned not more than five years, or both. May 10, 1950, c. 171, § 16, formerly § 15, 64 Stat. 156; Apr. 5, 1952, c. 159, § 1, 66 Stat. 43, renumbered July 11, 1958, Pub.L. 85–510, § 2, 72 Stat. 353, and amended Oct. 16, 1962, Pub.L. 87–835, § 1, 76 Stat. 1069.

Library references: War and National Defense ⇐35; C.J.S. War and National Defense § 43.

Historical Note

References in Text. The Atomic Energy Act of 1946, referred to in subsec. (a), was Act Aug. 1, 1946, c. 724, 60 Stat. 755. The Act was amended generally by Act Aug. 30, 1954, c. 1073, 68 Stat. 919, to be known as the Atomic Energy Act of 1954, and is classified to chapter 23 of this title.

"That Act", referred to in subsec. (a), refers to the Atomic Energy Act of 1946.

1962 Amendment. Subsec. (d). Pub.L. 87–835 designated existing provisions as par. (1), added the reference to section 1869 of this title, and substituted the requirement, for applications made on or after Oct. 1, 1962, of a full statement regarding convictions for crimes, other than any committed before age 16 or for minor traffic violations, and any criminal charges punishable by thirty days confinement, or more, pending at time of application for scholarship or fellowship, for the requirement of an affidavit stating the affiant did not believe in, and was not a member or supporter of any organization believing in, or teaching, the violent overthrow of the United States Government, or by any illegal means, in such par. (1), and added par. (2).

1952 Amendment. Subsec. (c). Act Apr. 5, 1952, substituted the "Civil Service Commission" for the "Federal Bureau of Investigation".

Legislative History: For legislative history and purpose of Act Apr. 5, 1952, see 1952 U.S.Code Cong. and Adm. News, p. 1370. See, also, Pub.L. 87-835, 1962 U.S.Code Cong. and Adm.News, p. 3771.

§ 1875. Appropriations

(a) To enable the Foundation to carry out its powers and duties, there is authorized to be appropriated to the Foundation, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this chapter.

(b) Appropriations made pursuant to the authority provided in subsection (a) of this section shall remain available for obligation, for expenditure, or for obligation and expenditure, for such period or periods as may be specified in the Acts making such appropriations. May 10, 1950, c. 171, § 17, formerly § 16, 64 Stat. 157; Aug. 8, 1953, c. 377, 67 Stat. 488, renumbered July 11, 1958, Pub.L. 85–510, § 2, 72 Stat. 353.

Library references: United States ⇐85; C.J.S. United States § 123.

Historical Note

1953 Amendment. Subsec. (a). Act Aug. 8, 1953, removed the $15 million limitation on the amount of the annual appropriations.

Legislative History: For legislative history and purpose of Act Aug. 8, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 2221.

§ 1876. Science Information Service; functions

The National Science Foundation shall establish a Science Information Service. The Foundation, through such Service, shall (1) provide, or arrange for the provision of, indexing, abstracting, translating, and other services leading to a more effective dissemination of scientific information, and (2) undertake programs to develop new or improved methods, including mechanized systems, for making scientific information available. Pub.L. 85–864, Title IX, § 901, Sept. 2, 1958, 72 Stat. 1601.

Historical Note

Codification. Section was enacted as part of the National Defense Education Act of 1958, Pub.L. 85-864, and not as part of this chapter, which constitutes the National Science Foundation Act of 1950.

Legislative History: For legislative history and purpose of Pub.L. 85-864, see 1958 U.S.Code Cong. and Adm.News, p. 4731.

§ 1877. Science Information Council—Establishment; membership; elections and appointments; tenure; reappointment

(a) The National Science Foundation shall establish, in the Foundation, a Science Information Council (hereafter in sections 1876–

1879 of this title referred to as the "Council") consisting of the Librarian of Congress, the director of the National Library of Medicine, the director of the Department of Agriculture library, and the head of the Science Information Service, each of whom shall be ex officio members, and fifteen members appointed by the Director of the National Science Foundation. The Council shall annually elect one of the appointed members to serve as chairman until the next election. Six of the appointed members shall be leaders in the fields of fundamental science, six shall be leaders in the fields of librarianship and scientific documentation, and three shall be outstanding representatives of the lay public who have demonstrated interest in the problems of communication. Each appointed member of such Council shall hold office for a term of four years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and (2) that of the members first appointed, four shall hold office for a term of three years, four shall hold office for a term of two years, and three shall hold office for a term of one year, as designated by the Director of the National Science Foundation at the time of appointment. No appointed member of the Council shall be eligible for reappointment until a year has elapsed since the end of his preceding term.

Duties and meetings

(b) It shall be the duty of the Council to advise, to consult with, and to make recommendations to, the head of the Science Information Service. The Council shall meet at least twice each year, and at such other times as the majority thereof deems appropriate.

Compensation and allowance for expenses

(c) Persons appointed to the Council shall, while serving on business of the Council, receive compensation at rates fixed by the National Science Foundation, but not to exceed $50 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence. Pub.L. 85–864, Title IX, § 902, Sept. 2, 1958, 72 Stat. 1601.

Library references: United States ⇐33; C.J.S. United States § 33.

Historical Note

Codification. Section was enacted as part of the National Defense Education Act of 1958. Pub.L. 85–864, and not as part of this chapter, which constitutes the National Science Foundation Act of 1950.

Legislative History: For legislative history and purpose of Pub.L. 85–864, see 1958 U.S.Code Cong. and Adm.News, p. 4731.

§ 1878. Functions relating to Science Information Service and Council

In carrying out its functions under sections 1876–1879 of this title, the National Science Foundation shall have the same power and

authority it has under this chapter to carry out its functions under this chapter. Pub.L. 85–864, Title IX, § 903, Sept. 2, 1958, 72 Stat. 1601.

Historical Note

Codification. Section was enacted as part of the National Defense Education Act of 1958, Pub.L. 85–864, and not as part of this chapter, which constitutes the National Science Foundation Act of 1950.

Legislative History: For legislative history and purpose of Pub.L. 85–864, see 1958 U.S.Code Cong. and Adm.News, p. 4731.

§ 1879. Appropriations for Science Information Service and Council

There are authorized to be appropriated for the fiscal year ending June 30, 1959, and for each succeeding fiscal year, such sums as may be necessary to carry out the provisions of sections 1876–1879 of this title. Pub.L. 85–864, Title IX, § 904, Sept. 2, 1958, 72 Stat. 1602.

Historical Note

Codification. Section was enacted as part of the National Defense Education Act of 1958, Pub.L. 85–864, and not as part of this chapter, which constitutes the National Science Foundation Act of 1950.

Legislative History: For legislative history and purpose of Pub.L. 85–864, see 1958 U.S.Code Cong. and Adm.News, p. 4731.

§ 1880. National Medal of Science

There is established a National Medal of Science (hereinafter referred to as the "medal"), which shall be of such design and materials and bear such inscriptions as the President, on the basis of recommendations submitted by the National Science Foundation, may prescribe, and shall be awarded as provided in section 1881 of this title. Pub.L. 86–209, § 1, Aug. 25, 1959, 73 Stat. 431.

Historical Note

Codification. Section was not enacted as a part of the National Science Foundation Act of 1950 which comprises this chapter.

Legislative History: For legislative history and purpose of Pub.L. 86–209, see 1959 U.S.Code Cong. and Adm.News, p. 2184.

§ 1881. Same; award; number; citizenship; ceremonies

(a) The President shall from time to time award the medal, on the basis of recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as he deems appropriate, to individuals who in his judgment are deserving of special recognition by reason of their outstanding contributions to knowledge in the physical, biological, mathematical, or engineering sciences.

(b) Not more than twenty individuals may be awarded the medal in any one calendar year.

(c) An individual may not be awarded the medal unless at the time such award is made he—

(1) is a citizen or other national of the United States; or

(2) is an alien lawfully admitted to the United States for permanent residence who (A) has filed an application for petition for naturalization in the manner prescribed by section 1445 (b) of Title 8 and (B) is not permanently ineligible to become a citizen of the United States.

(d) The presentation of the award shall be made by the President with such ceremonies as he may deem proper, including attendance by appropriate Members of Congress. Pub.L. 86–209, § 2, Aug. 25, 1959, 73 Stat. 431.

Historical Note

Codification. Section was not enacted as a part of the National Science Foundation Act of 1950 which comprises this chapter.

Legislative History: For legislative history and purpose of Pub.L. 86–209, see 1959 U.S.Code Cong. and Adm.News, p. 2184.

§§ 1882–1890. Reserved for future legislation

INDEX TO

TITLE 42—THE PUBLIC HEALTH AND WELFARE

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Title 42

PUBLIC HEALTH AND WELFARE

§§ 501 to 1890

Cumulative Annual Pocket Part

For Use In 1969

Replacing prior pocket part in back of volume

Current Laws and Legislative History

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United States Code
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EXPLANATION

This Cumulative Annual Pocket Part contains the laws of a general and permanent nature enacted by the Congress and approved through October 1, 1968, up to and including Public Law 90–541. This Pocket Part also includes Executive Orders, Proclamations and Reorganization Plans affecting such general and permanent laws.

For Congressional enactments approved after October 1, 1968, beginning with Public Law 90–542, see the current pamphlets of the U.S.Code Congressional and Administrative News.

The laws are classified to the United States Code. Under the same classification will be found the annotations from the decisions of the State and Federal courts construing the statutes.

The annotations close with the following:

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Federal Reporter, Second Series	396 F.2d 488
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For subsequent judicial constructions, pending the publication of the next supplementary service, see Table of Statutes Construed in the later permanent volumes and weekly Advance Sheets of the Reporters listed above.

Later statutes and judicial constructions and interpretations will be cumulated in subsequent pamphlets and annual pocket parts

Cite this Pocket Part by Title Number and Section Thus: —— U.S.C.A. § ——

TITLE 42

THE PUBLIC HEALTH AND WELFARE

CHAPTER 7.—SOCIAL SECURITY

SUBCHAPTER IV.—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

1968 Amendment. Pub.L. 90–248, Title II, § 240(a), Jan. 2, 1968, 81 Stat. 911, provided for grants for child-welfare services in the heading of the subchapter.

PART A.—AID TO FAMILIES WITH DEPENDENT CHIILDREN

1968 Amendment. Pub.L. 90–248, Title II, § 240(b), Jan. 2, 1968, 81 Stat. 911, added part A heading.

§ 601. Appropriations

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

As amended Jan. 2, 1968, Pub.L. 90–248, Title II, § 241(b) (1), 81 Stat. 916.

1968 Amendment. Pub.L. 90–248, § 241 (b) (1), substituted in first sentence "part" for "subchapter".

State Plans Conforming to Amendments by Operation of Law. Section 240(h) of Pub.L. 90–248 provided that: "Each State plan approved under title IV of the Social Security Act [this subchapter] as in effect on the day preceding the date of the enactment of this Act [Jan. 2, 1968] shall be deemed, without the necessity of any change in such plan, to have been conformed with the amendments made by subsections (a) and (b) of this section [amending subchapter IV and enacting part A heading]"

Legislative History: For legislative history and purpose of Pub.L. 90–248 see 1967 U.S.Code Cong. and Adm.News, p. 2834.

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Construction with other laws 1

1. Construction with other laws

McKinney's N.Y. Social Services Law, §§ 104, 104–a, 105, 360 providing for, inter alia, liens on real property interests of welfare recipients and on potential or actual recoveries for personal injuries, and for assignment of interests of insured recipients in life insurance policies, did not conflict with this section and sections 1201 and 1351 relating to aid to families with dependent children and to assistance for the blind and disabled so as to be invalid under the supremacy clause. Snell v. Wyman, D.C.N.Y.1968, 281 F.Supp. 853.

2. Purpose

Aid to families with dependent children program was designed to meet need unmet by programs providing employment for breadwinners and to protect children in families without breadwinner, wage earner or father. King v. Smith, Ala. 1968, 88 S.Ct. 2128, 392 U.S. 309, 20 L.Ed. 2d 1118.

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary

(a) A State plan for aid and services to needy families with children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community services aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; and (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; (8) provide that, in making the determination under clause (7), the State agency—

(A) shall with respect to any month disregard—

(i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment, and

(ii) in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first $30 of the total of such earned income for such month plus one-third of the remainder of such income for such month; (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 632(b) (2) and (3) of this title); and

(B) (i) may, subject to the limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (ii) may, before disregarding the amounts referred to in subparagraph (A) and clause (i) of this subparagraph, disregard not more than $5 per month of any income;

except that, with respect to any month, the State agency shall not disregard any earned income (other than income referred to in subparagraph (B)) of—

(C) any one of the persons specified in clause (ii) of subparagraph (A) if such person—

(i) terminated his employment or reduced his earned income without good cause within such period (of not less than 30 days) preceding such month as may be prescribed by the Secretary; or

(ii) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment; or

(D) any of such persons specified in clause (ii) of subparagraph (A) if with respect to such month the income of the persons so specified (within the meaning of clause (7)) was in excess of their need as determined by the State agency pursuant to clause (7) (without regard to clause (8)), unless, for any one of the four months preceding such month, the needs of such persons were met by the furnishing of aid under the plan; (9) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to families with dependent children; (10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1952, provide for prompt notice to appropriate law-enforcement officials of the furnishing of aid to families with dependent children in respect of a child who has been deserted or abandoned by a parent; (12) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title; (13) provide a description of the services which the State agency makes available to maintain and strengthen family life for children, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; (14) provide for the development and application of a program for such family services, as defined in section 606(d) of this title, and child-welfare services, as defined in section 625 of this title, for each child and relative who receives aid to families with dependent children, and each appropriate individual (living in the same home as a relative and child receiving such aid whose needs are taken into account in making the determination under clause (7)), as may be necessary in the light of the particular home conditions and other needs of such child, relative, and individual, in order to assist such child, relative, and individual to attain or retain capability for self-support and care and in order to maintain and strengthen family life and to foster child development; (15) provide—

(A) for the development of a program for each appropriate relative and dependent child receiving aid under the plan, and each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under clause (7), with the objective of—

(i) assuring, to the maximum extent possible, that such relative, child, and individual will enter the labor force and accept employment so that they will become self-sufficient, and

(ii) preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life,

(B) for the implementation of such programs by—

(i) assuring that such relative, child, or individual who is referred to the Secretary of Labor pursuant to clause (19) is furnished child-care services and that in all appropriate cases family planning services are offered them, and

(ii) in appropriate cases, providing aid to families with dependent children in the form of payments of the types described in section 606(b) (2) of this title, and

(C) that the acceptance by such child, relative, or individual of family planning services provided under the plan shall be voluntary on the part of such child, relative, or individual and shall not be a prerequisite to eligibility for or the receipt of any other service or aid under the plan,

(D) for such review of each such program as may be necessary (as frequently as may be necessary, but at least once a year) to insure that it is being effectively implemented,

(E) for furnishing the Secretary with such reports as he may specify showing the results of such programs, and

(F) to the extent that such programs under this clause or clause (14) are developed and implemented by services furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;

(16) provide that where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with respect to the situation it may have; (17) provide—

(A) for the development and implementation of a program under which the State agency will undertake—

(i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the paternity of such child and secure support for him, and

(ii) in the case of any child receiving such aid who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, and

(B) for the establishment of a single organizational unit in the State agency or local agency administering the State plan in each political subdivision which will be responsible for the administration of the program referred to in clause (A);

(18) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the State agency in administering the program referred to in clause (17) (A), including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the State agency or local agency administering the State plan; (19) provide—

(A) for the prompt referral to the Secretary of Labor or his representative for participation under a work incentive program established by part C of—

(i) each appropriate child and relative who has attained age sixteen and is receiving aid to families with dependent children,

(ii) each appropriate individual (living in the same home as a relative and child receiving such aid) who has attained

such age and whose needs are taken into account in making the determination under section 602(a) (7) of this title, and

(iii) any other person claiming aid under the plan (not included in clauses (i) and (ii)), who, after being informed of the work incentive programs established by part C, requests such referral unless the State agency determines that participation in any of such programs would be inimical to the welfare of such person or the family;

except that the State agency shall not so refer a child, relative, or individual under clauses (i) and (ii) if such child, relative, or individual is—

(iv) a person with illness, incapacity, or advanced age,

(v) so remote from any of the projects under the work incentive programs established by part C that he cannot effectively participate under any of such programs,

(vi) a child attending school full time, or

(vii) a person whose presence in the home on a substantially continuous basis is required because of the illness or incapacity of another member of the household;

(B) that aid under the plan will not be denied by reason of such referral or by reason of an individual's participation on a project under the program established by section 632(b) (2) or (3) of this title;

(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C by appropriate agencies of the State or private organizations of 20 per centum of the cost of such programs, as specified in section 635(b) of this title;

(D) that (i) training incentives authorized under section 634 of this title, and income derived from a special work project under the program established by section 632(b) (3) of this title shall be disregarded in determining the needs of an individual under section 602(a) (7) of this title, and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established by section 632(b) (2) or (3) of this title shall be taken into account;

(E) that, with respect to any individual referred pursuant to subparagraph (A) who is participating in a special work project under the program established by section 632(b) (3) of this title, (i) the State agency, after proper notification by the Secretary of Labor, will pay to such Secretary (at such times and in such manner as the Secretary of Health, Education, and Welfare prescribes) the money payments such State would otherwise make to or on behalf of such individual (including such money payments with respect to such individual's family), or 80 per centum of such individual's earnings under such program, whichever is lesser and (ii) the State agency will supplement any earnings received by such individual by payments to such individual (which payments shall be considered aid under the plan) to the extent that such payments when added to the individual's earnings from his participation in such special work project will be equal to the amount of the aid that would have been payable by the State agency with respect to such individual's family had he not participated in such special work project, plus 20 per centum of such individual's earnings from such special work project; and

(F) that if and for so long as any child, relative, or individual (referred to the Secretary of Labor pursuant to subparagraph (A) (i) and (ii) and section 607(b) (2) of this title) has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under a work incentive program established by part C with respect to which the Secretary of Labor has determined his participation is consistent with the

purposes of such part C, or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment—

(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under clause (7), and aid for any dependent child in the family in the form of payments of the type described in section 606 (b) (2) of this title (which in such a case shall be without regard to clauses (A) through (E) thereof) or section 608 of this title will be made;

(ii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

(iii) if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under clause (7)) if that child makes such refusal; and

(iv) if such individual makes such refusal, such individual's needs shall not be taken into account in making the determination under clause (7);

except that the State agency shall, for a period of sixty days, make payments of the type described in section 606(b) (2) of this title (without regard to clauses (A) through (E) thereof) on behalf of the relative specified in clause (i), or continue aid in the case of a child specified in clause (ii) or (iii), or take the individual's needs into account in the case of an individual specified in clause (iv), but only if during such period such child, relative, or individual accepts counseling or other services (which the State agency shall make available to such child, relative, or individual) aimed at persuading such relative, child, or individual, as the case may be, to participate in such program in accordance with the determination of the Secretary of Labor; (20) effective July 1, 1969, provide for aid to families with dependent children in the form of foster care in accordance with section 608 of this title; (21) provide that the State agency will report to the Secretary, at such times (not less often than once each calendar quarter) and in such manner as the Secretary may prescribe—

(A) the name, and social security account number, if known, of each parent of a dependent child or children with respect to whom aid is being provided under the State plan—

(i) against whom an order for the support and maintenance of such child or children has been issued by a court of competent jurisdiction but who is not making payments in compliance or partial compliance with such order, or against whom a petition for such an order has been filed in a court having jurisdiction to receive such petition, and

(ii) whom it has been unable to locate after requesting and utilizing information included in the files of the Department of Health, Education, and Welfare maintained pursuant to section 405 of this title,

(B) the last known address of such parent and any information it has with respect to the date on which such parent could last be located at such address, and

(C) such other information as the Secretary may specify to assist in carrying out the provisions of section 610 of this title;

(22) provide that the State agency will, in accordance with standards prescribed by the Secretary, cooperate with the State agency administering or supervising the administration of the plan of another State under this part—

(A) in locating a parent residing in such State (whether or not permanently) against whom a petition has been filed in a court of competent jurisdiction of such other State for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State, and

(B) in securing compliance or good faith partial compliance by a parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State; and

(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.

* * * * * * * * * *

(c) The Secretary shall, on the basis of his review of the reports received from the States under clause (15) of subsection (a) of this section, compile such data as he believes necessary and from time to time publish his findings as to the effectiveness of the programs developed and administered by the States under such clause. The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the programs developed and administered by each State under such clause (15).

As amended July 30, 1965, Pub.L. 89–97, Title IV, §§ 403(b), 410, 79 Stat. 418, 423; Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 201(a), (b), 202 (a), (b), 204(b), (e), 205(a), 210(a) (2), 211(a), 213(b), 81 Stat. 877, 879, 881, 890, 892, 895, 896, 898.

1968 Amendment. Subsec. (a) (5). Pub. L. 90–248, § 210(a) (2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a) (7). Pub.L. 90–248, § 202 (b), substituted introductory phrase "except as may be otherwise provided in clause (8)" for former concluding text that "except that, in making such determination, (A) the State agency may disregard not more than $50 per month of earned income of each dependent child under the age of 18 but not in excess of $150 per month of earned income of such dependent children in the same home, (B) the State agency may, subject to limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (C) the State agency may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $5 of any income" and required the consideration of other income and resources of any other individual (living in the same home as the child and relative) whose needs the State determined should be considered in determining the need of the child or relative claiming aid.

Subsec. (a) (8). Pub.L. 90–248, § 202 (b), added par. (8). Former par. (8) redesignated (9).

Subsec. (a) (8) (A). Pub.L. 90–248, § 204(e), provided that clause (ii) shall not apply to earned income derived from participation on a project maintained under programs established by section 632 (b) (2) and (3) of this title.

Subsec. (a) (9)–(12). Pub.L. 90–202 (a), redesignated former pars. (8)–(11) as (9)–(12), respectively. Former pars. (9)–(12) redesignated (10)–(13), respectively.

Subsec. (a) (13). Pub.L. 90–248, §§ 201 (a) (2), 202(a), struck out "(if any)" following "description of the services" and redesignated former par. (12) as (13), respectively. Former par. (13) redesignated (14).

Subsec. (a) (14). Pub.L. 90–248, § 201 (a) (1), substituted "family services, as defined in section 606(d) of this title, and child-welfare services, as defined in section 625 of this title," for "welfare and related services" and "other needs of such child, relative, and individual to attain or retain capability for self-support and care and in order to maintain and strengthen family life and to foster child development" for "other needs of such child, and provided for coordination of such programs, and any other services provided for children under the State plan, with the child-welfare services plan developed as provided in sections 721–728 of this title, with a view toward providing welfare and related services which will best promote the welfare of such child and his family" and extended the program to each relative and each appropriate individual (living in the same home as a relative and child receiving such aid whose needs are taken into account in making the determination under clause (7)).

Pub.L. 90–248, § 202(a), redesignated former par. (13) as (14).

Subsec. (a) (15)–(23). Pub.L. 90–248, §§ 201(a) (1) (C), 204(b), 205(a), 211(a), 213 (b), added cls. (15)–(18), (19), (20), (21) and (22), and (23), respectively.

Subsec. (c). Pub.L. 90–248, § 201(b), added subsec. (c).

1965 Amendment. Subsec. (a)(7). Pub. L. 89–97, §§ 403(b), 410, added clause (C) placing a ceiling of $5 upon the amount of any income which the state may disregard before disregarding the amounts referred to in clauses (A) and (B); and designated as clause (B) the existing provision following the first semicolon which authorized the state agency, in making its determination, to permit all or any portion of the earned or other

income to be set aside for future identifiable needs of a dependent child, and inserted, before such provision, clause (A) which authorized the state agency to disregard not more than $50 per month of earned income of each dependent child under the age of 18 but not in excess of $150 per month of earned income of such dependent children in the same home, respectively.

Effective Date of 1968 Amendment. Section 201(g) of Pub.L. 90–248 provided that:

"(1) The amendments made by subsections (a), (b), (d), (e), and (f) of this section [to subsecs. (a) (13)–(18), (c) of this section and sections 603(a) (3), (c), 606(d) and 608(d) of this title] shall be effective July 1, 1968 (or earlier if the State plan so provides); except that (A) if on the date of enactment of this Act [Jan. 2, 1968] the agency of a State referred to in section 402(a) (3) of the Social Security Act [subsec. (a) (3) of this section] is different from the agency of such State responsible for administering the plan for child-welfare services developed pursuant to part B of title IV of the Social Security Act [part B of this subchapter] the provisions of section 402 (a) (15) (F) of such Act [subsec. (a) (15) (F) of this section] (added thereto by subsection (a) of this section) shall not apply with respect to such agencies but only so long as such agencies of the State are different, and (B) if on such date the local agency administering the plan of a State under part A of title IV of such Act [part A of this subchapter] in a political subdivision is different from the local agency in such subdivision administering the State's plan for child-welfare services developed pursuant to part B of title IV of such Act [part B of this subchapter] the provisions of such section 402 (a) (15) (F) [subsec. (a) (15) (F) of this section] shall not apply with respect to such agencies but only so long as such local agencies are different.

"(2) The amendment made by subsection (c) [to section 603(a) (3) (A) of this title] shall apply with respect to services furnished after June 30, 1968, or furnished after such earlier date as the State plan may provide with respect to the amendment made by paragraph (1) of this subsection."

Section 202(b) of Pub.L. 90–248 provided that amendment of subsec. (a) (7) and enactment of subsec. (a) (8) of this section by such section 202(b) shall be effective July 1, 1969.

Section 204(c) (1) of Pub.L. 90–248 provided that: "The amendment made by subsection (b) [enacting subsec. (a) (19) of this section] shall in the case of any State be effective on July 1, 1968, or if a statute of such State prevents it from complying with the requirements of such amendment on such date, such amendment shall with respect to such State be effective on July 1, 1969; except such amendment shall be effective earlier (in the case of any State), but not before April 1, 1968, if a modification of the State plan to comply with such amendment is approved on an earlier date."

Amendment of subsec. (a) (5) by section 210(a) (2) of Pub.L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under part A of this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub.L. 90–248, set out as a note under section 302 of this title.

Section 211(a) of Pub.L. 90–248 provided in part that enactment of subsec. (a) (21) and (22) shall be effective Jan. 1, 1969.

Effective Date of 1965 Amendment. Section 403(b) of Pub.L. 89–97 provided that the amendment of subsec. (a) (7) of this section by said section was effective October 1, 1965.

Section 410 of Pub.L. 89–97 provided that the amendment of subsec. (a) (7) of this section by said section was effective July 1, 1965.

State Plans Compliance with Subsec. (a) (7) Requirements During Period after Dec. 31, 1967, and Prior to July 1, 1969. Section 202(c) of Pub.L. 90–248 provided that: "A State whose plan under section 402 of the Social Security Act [this section] has been approved by the Secretary shall not be deemed to have failed to comply substantially with the requirements of section 402(a) (7) of such Act [subsec. (a) (7) of this section] (as in effect prior to July 1, 1969) for any period beginning after December 31, 1967, and ending prior to July 1, 1969, if for such period the State agency disregards earned income of the individuals involved in accordance with the requirements specified in section 402(a) (7) and (8) of such Act [subsec. (a) (7), (8), of this section] as amended by this Act."

State Plans to Disregard Earned Income of Individuals in Determination of Need for Aid; Effective Date. Section 202(d) of Pub.L. 90–248 provided that: "Effective with respect to quarters beginning after June 30, 1968, in determining the need of individuals claiming aid under a State plan approved under part A of title IV of the Social Security Act [part A of this subchapter], the State shall apply the provisions of such part notwithstanding any provisions of law (other than such Act [this chapter]) requiring the State to disregard earned income of such individuals in determining need under such State plan."

Disregarding Income in Determination of Need in Puerto Rico, the Virgin Islands, and Guam. Section 248(c) of Pub. L. 90–248 provided that: "Effective July 1, 1969, neither the provisions of clauses (A) through (C) of section 402(a) (7) of such Act [subsec. (a) (7) of this section] as in effect before the enactment of this Act [Jan. 2, 1968] nor the provisions of section 402(a) (8) of such Act [subsec. (a) (8) of this section] as amended by section 202(b) of this Act shall apply in the case of Puerto Rico, the Virgin Islands, or Guam. Effective no later than July 1, 1972, the State plans of Puerto Rico, the Virgin Islands, and Guam approved under section 402 of such Act [this section] shall provide for the disregarding of income in making the determination under section 402(a) (7) of such Act [subsec. (a) (7) of this section] in amounts (agreed to between the Secretary and the State agencies involved) sufficiently lower than the amounts specified in section 402(a) (8) of such Act [subsec. (a) (8) of this section] to reflect appropriately the applicable differences in income levels."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

Supplementary Index to Notes

½. **State laws**

States have considerable latitude in allocating their resources for aid to families with dependent children. King v. Smith, Ala.1968, 88 S.Ct. 2128, 392 U.S. 309, 20 L.Ed.2d 1118.

States asserted interests in discouraging illicit sexual behavior and illegitimacy are not legitimate justifications for disqualification from aid to families with dependent children. Id.

State is not free to discourage immorality and illegitimacy by device of absolute disqualification of needy children from aid to families with dependent children payments based upon mother's cohabitation in or outside home with able-bodied man. Id.

1. Purpose

Basic purpose of aid to dependent children program under this chapter and the Alabama statute is to provide financial assistance to needy children who are deprived of the support and care of one of their parents. Smith v. King, D.C.Ala. 1967, 277 F.Supp. 31, affirmed 88 S.Ct. 2128, 392 U.S. 309, 20 L.Ed.2d 1118.

3a. Employment and discharge of state personnel

Employee who was discharged as head of county office of state department of welfare and whose discharge was found to be without cause by state review board had no cause of action against administrative head of state department and members of county board of public welfare under federal Constitution and federal statutory and regulatory requirements even though she had not been reinstated in her position. Norton v. Blaylock, D.C.Ark.1968, 285 F.Supp. 659.

Requirements of federal grants-in-aid programs that states set up and operate under personnel merit systems expresses Congressional policy in favor of security for state welfare employees who have attained permanent status. Id.

4. State plan, sufficiency of

That the one-year Delaware residency requirement for eligibility of needy persons for assistance fell within bounds permitted for federal financial participation under this chapter did not preclude necessity for considering whether the residency requirement violated U.S.C.A. Const. Amend. 14. Green v. Department of Public Welfare of State of Del., D.C. Del. 1967, 270 F.Supp. 173.

4a. Equality of treatment

Alabama "substitute father" regulation, under which aid to dependent children may be denied because of immoral conduct of children's mother, is an arbitrary and discriminatory classification resulting in denial of financial benefits to needy children who are eligible and entitled to receive such benefits under both federal and state statutes, and deprives those children of equal protection of the laws in violation of U.S.C.A.Const. Amend. 14. Smith v. King, D.C.Ala.1967, 277 F.Supp. 31, affirmed 88 S.Ct. 2128, 392 U.S. 309, 20 L.Ed. 1118.

No vested legal right exists for anyone to receive public financial assistance, and neither the United States nor the Alabama Constitution requires Alabama to grant financial assistance to needy dependent children; however, once Alabama undertakes to provide a statutory program of assistance it must do so in conformity with the constitutional mandate of equal protection. Id.

6. Incentive programs

Requiring divorce mother who cared for her two children and her ill mother in her home to accept employment outside home as condition to continue payment of aid-to-dependent-children benefits did not, under the circumstances, necessarily result in neglect of her children, and thus suspension of aid was not subject to attack on that ground. Stacy v. Ashland County Dept. of Public Welfare, Wis.1968, 159 N.W.2d 630

§ 603. Payment to States; computation of amounts

(a) From the sums appropriated therefor, the Secretary of the Treasury shall (subject to subsection (d)) pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to families with dependent children under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) five-sixths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $18 multiplied by the total number of recipients of aid to families with dependent children for such month (which total number, for purposes of this subsection, means (i) the number of individuals with respect to whom such aid in the form of money payments is paid for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to families with dependent children in the form of medical or any other type of remedial care, plus (iii) the number of individuals, not counted under clause (i) or (ii), with respect to whom payments described in section 606(b) (2) of this title are made in such month and included as expenditures for purposes of this paragraph or paragraph (2)); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under

clause (A), not counting so much of any expenditure with respect to any month as exceeds (i) the product of $32 multiplied by the total number of recipients of aid to families with dependent children (other than such aid in the form of foster care) for such month, plus (ii) the product of $100 multiplied by the total number of recipients of aid to families with dependent children in the form of foster care for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to families with dependent children under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $18 multiplied by the total number of recipients of such aid for such month; and

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) any of the services described in clauses (14) and (15) of section 602(a) of this title which are provided to any child or relative who is receiving aid under the plan, or to any other individual (living in the same home as such relative and child) whose needs are taken into account in making the determination under clause (7) of such section,

(ii) any of the services described in clauses (14) and (15) of section 602(a) of this title which are provided to any child or relative who is applying for aid to families with dependent children or who, within such period or periods as the Secretary may prescribe, has been or is likely to become an applicant for or recipient of such aid, or

(iii) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of the remainder of such expenditures.

The services referred to in subparagraph (A) shall include only—

(C) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this part shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (D), if provided by such staff, and

(D) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State

health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (C) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved; and except that, to the extent specified by the Secretary, child-welfare services, family planning services, and family services may be provided from sources other than those referred to in subparagraphs (C) and (D). The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraph (B) applies shall be determined in accordance with such methods and procedures as may be permitted by the Secretary.

(4) Repealed. Pub.L. 90–248, Title II, § 201(e)(3), 81 Stat. 880.

(5) in the case of any State, an amount eual to the sum of—

(A) 50 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children in the form of payments or care specified in paragraph (1) of section 606(e) of this title, and

(B) 75 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children in the form of services specified in paragraph (1) of section 606(e) of this title.

The number of individuals with respect to whom payments described in section 606(b) (2) of this title are made for any month, who may be included as recipients of aid to families with dependent children for purposes of paragraph (1) or (2), may not exceed 10 per centum of the number of other recipients of aid to families with dependent children for such month. In computing such 10 percent, there shall not be taken into account individuals with respect to whom such payments are made for any month in accordance with section 602(a)(19)(F) of this title.

* * * * * * * * * *

(c) Repealed. Pub.L. 90–248, Title II, § 201(e)(1), Jan. 2, 1968, 81 Stat. 880.

(d) (1) Notwithstanding any other provision of this chapter (except the succeeding paragraphs of this subsection), the average monthly number of dependent children under the age of 18 who have been deprived of parental support or care by reason of the continued absence from the home of a parent with respect to whom payments under this section may be made to a State for any calendar quarter after June 30, 1969, shall not exceed the number which bears the same ratio to the total population of such State under the age of 18 on the first day of the year in which such quarter falls as the average monthly number of such dependent children under the age of 18 with respect to whom payments under this section were made to such State for the calendar quarter beginning January 1, 1968, bore to the total population of such State under the age of 18 on that date.

(2) In the case of any State which is determined by the Secretary to have effectuated, in compliance with or in reliance upon or in consideration of a judicial decision (as defined in paragraph (3)), a policy of providing aid to families with dependent children under its State plan approved under this part to or on behalf of individuals who, except for such policy, would not be eligible for such aid, the average monthly number of dependent children under the age of 18 who have been deprived of parental support or care by reason of the continued absence from the home of a

parent with respect to whom payments under this section were made to the State for the calendar quarter beginning January 1, 1968, shall, for purposes of applying the provisions of paragraph (1), be increased by the average monthly number, in the calendar quarter beginning April 1, 1969, of children under the age of 18 who are deprived of parental support or care by reason of the continued absence from the home of a parent and who by reason of such policy began to receive such aid after March 1968 and received such aid during the calendar quarter beginning April 1, 1969.

(3) As used in paragraph (2), the term "judicial decision" means any decision by a court of the United States of competent jurisdiction in any case or controversy in which there is decided the issue of the validity, under the United States Constitution, of any law, rule, regulation, or policy of a State under which aid to families with dependent children is denied to individuals otherwise eligible therefor because of failure to meet duration of residence requirements or because of the relationship between a male individual and the mother of the child or children with respect to whom such aid is sought.

As amended July 30, 1965, Pub.L. 89–97, Title I, § 122, Title IV, § 401 (c), 79 Stat. 353, 415; Jan. 2, 1968, Pub.L. 90–238, Title II, §§ 201(c)–(e) (3), 205(b), 206(a), 207(b), 208, 241(b) (2), (3), 81 Stat. 879, 880, 892–894, 916; June 28, 1968, Pub.L. 90–364, Title III, § 301, 82 Stat. 273.

* * * * * * * * * *

1968 Amendments. Subsec. (a). Pub.L. 90–248, §§ 207(b), 208(a), substituted "shall (subject to subsection (d) of this section) pay" for "shall pay" in the text preceding par. (1), and increased the percentage limitation from 5 to 10 and provided for the computation of such 10 per centum without taking into account individuals with respect to whom payments are made for any month in accordance with section 602(a) (19) (F) of this title.

Subsec. (a) (1) (B). Pub.L. 90–248, § 205(b), designated existing provisions as cl. (i), inserted therein "(other than such aid in the form of foster care)" and added cl. (ii).

Subsec. (a) (3). Pub.L. 90–248, § 201 (d) (4), (e) (2), struck out in the last sentence reference to subpar. (C) and from the introduction "whose State plan approved under section 602 of this title meets the requirements of subsection (c) (1) of this section" after "in the case of any State plan", respectively.

Subsec. (a) (3) (A). Pub.L. 90–248, § 201(c), substituted provisions of cls. (i) and (ii) for Federal payments for services described in section 602(a) (14) and (15) of this title to any child or relative who is receiving aid under the State plan, or to any other individual (living in the same home as such relative and child) or for such services to any child or relative who is applying for aid to families with dependent children or who has been or is likely to become an applicant for or recipient of such aid for former cls. (i)–(3) respecting such Federal payments for subsec. (c) (1) services to any relative with whom any dependent child (applying for or receiving aid) is living to help the relative attain or retain capability for self-support or self-care, or services to maintain and strengthen family life for such child; other services to prevent or reduce dependency; and such cl. (ii) and subsec. (c) (1) services as are appropriate for any relative with whom any child (who has been or is likely to become an applicant for or recipient of aid) is living, or as appropriate for such a child, if such services are requested by such relative, and redesignated former cl. (iv) as (3).

Subsec. (a) (3) (B). Pub.L. 90–248, § 201(c), (d) (1) (A), struck out former subpar. (B) provisions for Federal payments of one-half of expenditures (not included under subpar. (A)) for services provided any relative, with whom any child (who has been or is likely to become an applicant for or recipient of aid) is living, or to such child, if such services are requested by such relative or for services provided to any child who is an applicant for or recipient of such aid, or to any relative with whom such a child is living, and redesignated former subpar. (C) as (B), respectively.

Subsec. (a) (3) (C). Pub.L. 90–248, § 201(d) (1) (A), (B), (2), redesignated former subpar. (D) as (C), substituted therein reference to subpar. "(D)" for "(E)", and struck out in the introductory text to subpar. (C) reference to subpar. "(B)", respectively. Former subpar. (C) redesignated (B).

Subsec. (a) (3) (D). Pub.L. 90–248, §§ 201(d) (1) (A), (C), (3), 241(b) (2), redesignated former subpar. (E) as (D), substituted in the exception provision following subpar. (D) reference to subpar. "(C)" for "(D)", added following subpar. (D) "; and except that, to the extent specified by the Secretary, child-welfare services, family planning services, and family services may be provided from sources other than those referred to in subparagraphs (C) and (D)", and substituted in proviso "part" for "subchapter." Former subpar. (D) redesignated (C).

Subsec. (a) (3) (E). Pub.L. 90–248, § 201(d) (1) (A), redesignated former subpar. (E) as (D).

Subsec. (a) (4). Pub.L. 90–248 § 201 (e) (3), 81 Stat. 880, repealed par. (4) provisions respecting payments when approved State plan did not meet subsec. (c) (1) requirements in an amount equal to one-half of the total of sums expended during the quarter as found necessary by the Secretary for proper and efficient administration of the State plan.

Subsec. (a) (5). Pub.L. 90–248, § 206(a), added par. (5).

Subsec. (c). Pub.L. 90–248, § 201(e) (1), repealed subsec. (c) provisions respecting State qualification for subsec. (a) (3) payments when State plan required State agencies to provide services to maintain and strengthen family life for children and to help relatives with whom children (who are applicants for or recipients of aid) are living to attain capability for

self-support or self-care and for stopping such subsec. (a) (3) payments after notice and hearing for noncompliance with such requirements in the administration and supervision of the State plan but providing subsec. (a) (4) payments instead.

Subsec. (c) (2). Pub.L. 90–248, § 241(b) (3), substituted in last sentence "part" for "subchapter".

Subsec. (d). Pub.L. 90–364 denominated existing provisions as par. (1) and in par. (1) as so denominated inserted "(except the succeeding paragraphs of this subsection)" immediately after "chapter" and substituted "June 30, 1969" for "June 30, 1968", and added pars. (2) and (3).

Pub.L. 90–248, § 208(b), added subsec. (d).

1965 Amendment. Subsec. (a) (1). Pub.L. 89–97, §§ 122, 401(c), inserted "premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other" after "expenditures for" in parenthetical phrase appearing in so much of par. (1) as precedes clause (A); and changed the formula by which the federal share of aid to families with dependent children is determined by increasing the share of the average monthly assistance payment from 14/17ths of the first $17 to 5/6ths of the first $18 of such payment and raised the ceiling for federal participation from $30 to $32 a month per recipient, respectively.

Subsec. (a) (2). Pub.L. 89–97, § 122, inserted "premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other" after "expenditures for" in parenthetical phrase.

Effective Date of 1968 Amendment. Section 205(e) of Pub.L. 90–248 provided that: "The amendments made by subsections (b) and (c) [to subsec. (a) (1) (B) of this section and section 608(a) (4) of this title] shall apply only with respect to foster care provided after December 1967."

Amendments of subsec. (a) (3), (a) (3) (B)–(D) and concluding text, and repeal of subsecs. (a) (4) and (c) of this section by section 201(d), (e) of Pub.L. 90–248 effective July 1, 1968 (or earlier if the State plan so provides) and provision for nonapplication of section 602(a) (15) (F) of this title when there are different State agencies for administration of services, and enactment of subsec. (a) (3) (A) of this section by section 201(c) of Pub.L. 90–248 applicable with respect to services furnished after June 30, 1968, or furnished after such earlier date as the State plan may provide, see section 201(g) of Pub.L. 90–248, set out as a note under section 602 of this title.

Effective Date of 1965 Amendment. Amendment of subsec. (a) (1) of this section by section 401 of Pub.L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a state plan approved under subchapters I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub.L. 89–97, set out as a note under section 303 of this title.

Effective Date of 1962 Amendment. Section 202(e) of Pub.L. 87–543, as amended by Pub.L. 90–248, Title II, § 207(c), Jan. 2, 1968, 81 Stat. 894, provided that: "The amendments made by sections 105 (other than subsection (c)) and 108 [adding sections 603(a) (1) (A) (iii), 603(a) last par., and 609 of this title, amending section 606 (b) of this title, and enacting provisions set out as notes under sections 603 and 609 of this title] shall be applicable in the case of expenditures under a State plan approved under title IV of the Social Security Act [this subchapter], made during the period beginning October 1, 1962."

Nonduplication of Payments to States: Prohibition of Payments after Dec. 31, 1969. Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub.L. 89–97, set out as a note under section 1396b of this title.

Federal Percentage of State Expenditures for Section 602(a) (14), (15) Services from Jan. 2, 1968, and before July 1, 1969. Section 201(h) of Pub.L. 90–248 provided that: "Notwithstanding subparagraph (A) of section 403(a) (3) of the Social Security Act [subsec. (a) (3) (A) of this section] (as amended by subsection (c) of this section), the rate specified in such subparagraph in the case of any State shall be 85 per centum (rather than 75 per centum) with respect to expenditures, for services furnished pursuant to clauses (14) and (15) of section 402(a) of such Act [section 602(a) of this title], made on or after the date of enactment of this Act [Jan. 2, 1968], and prior to July 1, 1969."

Rate of Payments for Puerto Rico, the Virgin Islands, and Guam. Section 248 (b) of Pub.L. 90–248 provided that: "Notwithstanding subparagraphs (A) and (B) of section 403(a) (3) of such Act [subsec. (a) (3) (A), (B) of this section] (as amended by this Act), the rate specified in such subparagraphs in the case of Puerto Rico, the Virgin Islands, and Guam shall be 60 per centum (rather than 75 or 85 per centum)."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834; Pub.L. 90–364, 1968 U.S.Code Cong. and Adm.News, p. —.

Index to Notes

1. Stays

Stay of judgment of lower court which held unconstitutional a State regulation which made certain children ineligible for welfare assistance whenever their mother was cohabiting with a man other than her husband would be vacated where, under amendment to this section which became effective after stay was granted, possibility of injury to State from the judgment would appear to be more than offset by possibility of decreased federal welfare assistance to all dependent children within the State for an indefinite period if the stay were continued. King v. Smith, Ala.1968, 88 S.Ct. 842, 19 L.Ed.2d 971.

§ 604. Stopping payments on deviation from required provisions of plan or failure to comply therewith

(a) In the case of any State plan for aid and services to needy families with children which has been approved by the Secretary, if the Secretary, after reasonable notice and opportunity for hearing to the State

agency administering or supervising the administration of such plan, finds—

* * * * * * * * * *

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to the State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(b) No payment to which a State is otherwise entitled under this part for any period before September 1, 1962, shall be withheld by reason of any action taken pursuant to a State statute which requires that aid be denied under the State plan approved under this part with respect to a child because of the conditions in the home in which the child resides; nor shall any such payment be withheld for any period beginning on or after such date by reason of any action taken pursuant to such a statute if provision is otherwise made pursuant to a State statute for adequate care and assistance with respect to such child.

As amended Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 241(b)(4), 245, 81 Stat. 916, 918.

1968 Amendment. Subsec. (a). Pub.L. 90–248, § 245, inserted "(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)" after "further payments will not be made to the State" and substituted in last sentence "further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)" for "further certification to the Secretary of the Treasury with respect to such State".

Subsec. (b). Pub.L. 90–248, § 241(b)(4), substituted in two instances "part" for "subchapter".

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 606. Definitions

When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title) which do not meet the preceding require-

ments of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 602 of this title includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(D) aid in the form of foster home care in behalf of children described in section 608(a) of this title; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made;

* * * * * * * * * *

(d) The term "family services" means services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence.

(e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under section 602 of this title includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

As amended July 30, 1965, Pub.L. 89–97, Title IV, § 409, 79 Stat. 422; Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 201(f), 206(b), 207(a), 241(b)(5), 81 Stat. 880, 893, 916.

1968 Amendment. Pub.L. 90–248, § 241(b)(5), substituted in text preceding subsec. (a) "part" for "subchapter".

Subsec. (b)(2). Pub.L. 90–248, § 207(a)(1), inserted ", and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title" and "or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual".

Subsec. (b)(2)(B)–(F). Pub.L. 90–248, § 207(a)(2), struck out cl. (B) requirement that State plan include provision for making payments only when such payments will meet all the need of the individuals with respect to whom the payments are made, and redesignated former cls. (C)–(F) as (B)–(E), respectively.

Subsec. (d). Pub.L. 90–248, § 201(f), added subsec. (d).

Subsec. (e). Pub.L. 90–248, § 206(b), added subsec. (e).

1965 Amendment. Subsec. (a). Pub.L. 89–97 substituted "(as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university," for "(as determined in accordance with standards prescribed by the Secretary) a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent," in clause (2)(B).

Effective Date of 1968 Amendment; Different State Agencies for Administration of Services. Addition of subsec. (d) of this section by section 201(f) of Pub.L. 90–248 effective July 1, 1968 (or earlier if the State plan so provides) and provision for nonapplication of section 602(a)(15)(F) of this title when there are different State agencies for administration of services, see section 201(g)(1) of Pub.L. 90–248, set out as a note under section 602 of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

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2. Parent

Under subsec. (a) of this section singling out for welfare assistance by aid to families with dependent children needy child who has been deprived of parental support or care by reason of death, continued absence from home, or physical or mental incapacity of parent, term "parent" is intended to include only those persons with legal duty of support. King v. Smith, Ala.1968, 88 S.Ct. 2128, 392 U.S. 309, 20 L.Ed.2d 1118.

Alabama "substitute father" regulation requiring disqualification of otherwise eligible children from aid to dependent children if their mother "cohabits" with man not obligated by Alabama law to support the children defines "parent" in manner inconsistent with subsec. (a) of this section and is invalid. Id.

3. Dependent child

To the extent that Department has approved any provision respecting aid to families with dependent children conflicting with subsec. (a) of this section defining dependent child, such approval is inconsistent with the controlling federal statute. King v. Smith, Ala.1968, 88 S.Ct. 2128, 392 U.S. 309, 20 L.Ed.2d 1118.

§ 607. Dependent children of unemployed parents; termination date; definition

(a) The term "dependent child" shall, notwithstanding section 606(a) of this title, include a needy child who meets the requirements of section 606(a)(2) of this title, who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 606(a)(1) of this title in a place of residence maintained by one or more of such relatives as his (or their) own home.

(b) The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title—

(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) of this section when—

(A) such child's father has not been employed (as determined in accordance with standards prescribed by the Secretary) for at least 30 days prior to the receipt of such aid,

(B) such father has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment, and

(C) (i) such father has 6 or more quarters of work (as defined in subsection (d)(1) of this section) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation

under an unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d) (3) of this section) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

(2) provides—

(A) for such assurances as will satisfy the Secretary that fathers of dependent children as defined in subsection (a) of this section will be referred to the Secretary of Labor as provided in section 602(a) (19) of this title within thirty days after receipt of aid with respect to such children;

(B) for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, designed to assure maximum utilization of available public vocational education services and facilities in the State in order to encourage the retraining of individuals capable of being retrained; and

(C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section—

(i) if, and for so long as, such child's father is not currently registered with the public employment offices in the State, and

(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

(c) Notwithstanding any other provisions of this section, expenditures pursuant to this section shall be excluded from aid to families with dependent children (A) where such expenditures are made under the plan with respect to any dependent child as defined in subsection (a) of this section, (i) for any part of the 30-day period referred to in subparagraph (A) of subsection (b) (1) of this section, or (ii) for any period prior to the time when the father satisfies subparagraph (B) of such subsection, and (B) if, and for as long as, no action is taken (after the 30-day period referred to in subparagraph (A) of subsection (b) (2) of this section), under the program therein specified to refer such father to the Secretary of Labor pursuant to section 602(a) (19) of this title.

(d) For purposes of this section—

(1) the term "quarter of work" with respect to any individual means a calendar quarter in which such individual received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 413(a) (2) of this title), or in which such individual participated in a community work and training program under section 609 of this title or any other work and training program subject to the limitations in section 609 of this title, or the work incentive program established under part C;

(2) the term "calendar quarter" means a period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31; and

(3) an individual shall be deemed qualified for unemployment compensation under the State's unemployment compensation law if—

(A) he would have been eligible to receive such unemployment compensation upon filing application, or

(B) he performed work not covered under such law and such work, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such unemployment compensation upon filing application.

As amended Pub.L. 90–36, § 2, June 29, 1967, 81 Stat. 94; Jan. 2, 1968, Pub.L. 90–248, Title II, § 203(a), 81 Stat. 882; June 28, 1968, Pub.L. 90–364, Title III, § 302, 82 Stat. 273.

1968 Amendments. Pub.L. 90–248, § 203 (a), provided for application of the provisions to unemployed fathers rather than unemployed parents and eliminated effective period provision beginning May 1, 1961, and ending with close of June 30, 1968.

Subsec. (a). Pub.L. 90–248, § 203(a), in provisions designated as subsec. (a), redefined definition of "dependent child" to provide for a definition of unemployment of a father under standards prescribed by the Secretary rather than unemployment of a parent as defined by the State.

Subsec. (b). Pub.L. 90–248, § 203(a), in provisions designated as subsec. (b), provided for requirements and contents of State plans, adding introductory text preceding subpar. (A) of par. (1), pars. (1) (A), (2) (A), and (2) (C) (i), and incorporating existing cl. (1) provision for inclusion of aid for any needy child in par. (1), existing cl. (3) (B) in par. (1) (B), existing cl. (3) (A) in par. (2) (B) (substituting "designed to assure maximum utilization" for "looking toward maximum utilization"), existing second sentence in par. (2) (C) (ii), and deleted former cl. (2) (B) respecting assurance of prohibition of aid as long as the unemployed parent refuses without good cause to accept employment offered through public employment offices or by an employer in good faith, now covered in section 602(a) (19) (F) of this title.

Subsec. (b) (2) (C). Pub.L. 90–273 added provisions prohibiting payment to a family on the basis of the father's unemployment with respect to any week for which the father receives unemployment compensation under State or Federal law.

Subsecs. (c), (d). Pub.L. 90–248, § 203 (a), added subsecs. (c) and (d).

1967 Amendment. Pub.L. 90–36 extended termination date from June 30, 1967, to June 30, 1968.

Father as Meeting Certain Subsec. (b) (1) (C) Requirements of Minimum Quarters of Work and Receipt of or Qualification for Unemployment Compensation. Section 203(b) of Pub.L. 90–248 provided that: "In the case of an application for aid to families with dependent children under a State plan approved under section 402 of such Act [section 602 of this title] with respect to a dependent child as defined in section 407(a) of such Act [subsec. (a) of this section] (as amended by this section) within 6 months after the effective date of the modification of such State plan which provides for payments in accordance with section 407 of such Act [this section] as so amended, the father of such child shall be deemed to meet the requirements of subparagraph (C) of section 407(b) (1) of such Act [subsec. (b) (1) (C) of this section] (as so amended) if at any time after April 1961 and prior to the date of application such father met the requirements of such subparagraph (C). For purposes of the preceding sentence, an individual receiving aid to families with dependent children (under section 407 of the Social Security Act [this section] as in effect before the enactment of this Act [Jan. 2, 1968]) for the last month ending before the effective date of the modification referred to in such sentence shall be deemed to have filed application for such aid under such section 407 [this section] (as amended by this section) on the day after such effective date."

Legislative History: For legislative history and purpose of Pub.L. 90–36, see 1967 U.S.Code Cong. and Adm.News, p. 1289. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834; Pub.L. 90–364, 1968 U.S.Code Cong. and Adm.News, p. —.

§ 608. Payment to States for foster home care of dependent children; definitions

Effective for the period beginning May 1, 1961—

(a) the term "dependent child" shall, notwithstanding section 606(a) of this title, also include a child (1) who would meet the requirements of such section 606(a) or of section 607 of this title except for his removal after April 30, 1961, from the home of a relative (specified in such section 606(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child, (2) whose placement and care are the responsibility of (A) the State or local agency administering the State plan approved under section 602 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made an agreement which is still in effect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph (f) (1) and such other provisions as may be necessary to assure accomplishment of the objectives of the State plan approved under section 602 of this title, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who (A) received aid under such State plan in or for the month in which court proceedings leading to such determination were initiated, or (B) (i) would have received such aid in or for such month if application had been made therefor, or (ii) in the case of a child who had been living with a relative specified in section 606(a) of this title within 6

months prior to the month in which such proceedings were initiated, would have received such aid in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made therefor;

* * * * * * * * * *

(d) services described in paragraph (f) (2) of this section shall be considered as part of the administration of the State plan for purposes of section 603(a) (3) of this title;

As amended Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 201(e) (4), 205 (c), 81 Stat. 880, 892.

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1968 Amendment. Subsec. (a) (4). Pub. L. 90–248, § 205(c) designated existing provisions as (A) and added (B).

Subsec. (d). Pub.L. 90–248, § 201(e) (4), struck out the reference to section 603(a) (4) of this title in the introductory text.

Effective Date of 1968 Amendment. Amendment of subsec. (a) (4) by section 205(c) of Pub.L. 90–248 applicable only with respect to foster care provided after December 1967, see section 205(e) of Pub. L. 90–248, set out as a note under section 603 of this title.

Amendment of subsec. (d) of this section by section 201(e) of Pub.L. 90–248 effective July 1, 1968 (or earlier if the State plan so provides), see section 201(g) (1) of Pub.L. 90–248, set out as a note under section 602 of this title.

Effective Date of 1962 Amendment. Section 135(e) of Pub.L. 87–543, as amended by Pub.L. 88–641, § 1, Oct. 13, 1964, 78 Stat. 1042; Pub.L. 90–36, § 2, June 29, 1967, 81 Stat. 94; Pub.L. 90–248, Title II, § 205(d), Jan. 2, 1968, 81 Stat. 893, provided that: "The amendments made by the preceding provisions of this section [to this section] shall be effective only in the case of expenditures under a State plan approved under title IV of the Social Security Act [this subchapter] made during the period beginning October 1, 1962."

Effective Date of 1962 Amendment; Report to President and Congress; Recommendations as to Continuation and Modification of Amendment. Section 155(b) of Pub.L. 87–543, as amended by Pub.L. 88–48, June 29, 1963, 77 Stat. 70; Pub.L. 88–345, June 30, 1964, 78 Stat. 235; Pub.L. 90–36, § 2, June 29, 1967, 81 Stat. 94; Pub. L. 90–248, Title II, § 205(d), Jan. 2, 1968, 81 Stat. 893, provided that: "The amendment made by subsection (a) [to par. (a) (2) of this section] shall apply only for the period beginning October 1, 1962. The Secretary shall submit to the President, for transmission to the Congress prior to December 31, 1963, a full report of the administration of the provisions of the amendment made by subsection (a) [to par. (a) (2) of this section], including the experiences of each of the States in arranging for foster care under the provisions of their respective State plans which are in accord with such amendment, together with his recommendations as to continuation of, and modifications in, such amendment."

Nonduplication of Payments to States: Prohibition of Payments after Dec. 31, 1969. Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub.L. 89–97, Title I, July 30, 1965, 79 Stat. 352, set out as a note under section 1396b of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 609. Community work and training programs

Provisions Inapplicable to Any State with respect to Any Quarter Beginning After June 30, 1968. Section 204(c) (2) of Pub.L. 90–248, Title II, Jan. 2, 1968, 81 Stat. 892, provided that: "The provisions of section 409 of the Social Security Act [this section] shall not apply to any State with respect to any quarter beginning after June 30, 1968."

§ 610. Assistance by Internal Revenue Service in locating parents; appropriations; transfer of moneys

(a) Upon receiving a report from a State agency made pursuant to section 602(a) (21) of this title, the Secretary shall furnish to the Secretary of the Treasury or his delegate the names and social security account numbers of the parents contained in such report, and the name of the State agency which submitted such report. The Secretary of the Treasury or his delegate shall endeavor to ascertain the address of each such parent from the master files of the Internal Revenue Service, and shall furnish any address so ascertained to the State agency which submitted such report.

(b) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of subsection (a) of this section. The Secretary shall transfer to the Secretary of the Treasury from time to time sufficient amounts out of the monies appropriated pursuant to this subsection to enable him to perform his functions under subsection (a) of this section.

Aug. 14, 1935, c. 531, Title IV, § 410, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 211(b), 81 Stat. 897.

PART B.—CHILD-WELFARE SERVICES

1968 Amendment. Pub.L. 90–248, Title II, § 240(c), Jan. 2, 1968, 81 Stat. 911, added part B heading.

§ 620. Appropriations

For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child-welfare services, the following sums are hereby authorized to be appropriated: $55,000,000 for the fiscal year ending June 30, 1968, $100,000,000 for the fiscal year ending June 30, 1969, and $110,000,000 for each fiscal year thereafter.

Aug. 14, 1935, c. 531, Title IV, § 420, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 240(c), 81 Stat. 911.

Effective Date. Section 240(e) (2) of Pub.L. 90–248 provided that: "Part B of title IV of the Social Security Act (as added by subsection (c) of this section) [this part], and the amendments made by subsections (a) and (b) of this section [amending subchapter IV and adding part A heading], shall become effective on the date this Act is enacted [Jan. 2, 1968]."

State Plans; Date of Development; Appropriations, Allotments, and Reallotments. Section 240(f) of Pub.L. 90–248 provided that:

"In the case of any State which has a plan developed as provided in part 3 of title V of the Social Security Act [part 3 of this subchapter] as in effect prior to the enactment of this Act [Jan. 2, 1968]—

"(1) such plan shall be treated as a plan developed, as provided in part B of title IV of such Act [this part] on the date this Act is enacted [Jan. 2, 1968];

"(2) any sums appropriated, allotted, or realloted pursuant to part 3 of title V [former sections 721–728 of this title] for the fiscal year ending June 30, 1968, shall be deemed appropriated, allotted, or reallotted (as the case may be) under part B of title IV of such Act [this part] for such fiscal year;".

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 621. Allotments to States

The sum appropriated pursuant to section 620 of this title for each fiscal year shall be allotted by the Secretary for use by cooperating State public welfare agencies which have plans developed jointly by the State agency and the Secretary, as follows: He shall allot $70,000 to each State, and shall allot to each State an amount which bears the same ratio to the remainder of the sum so appropriated for such year as the product of (1) the population of such State under the age of 21 and (2) the allotment percentage of such State (as determined under section 623 of this title) bears to the sum of the corresponding products of all the States.

Aug. 14, 1935, c. 531, Title IV, § 421, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 240(c), 81 Stat. 912.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 622. Payment to States; computation of amounts

(a) From the sums appropriated therefor and the allotments available under this part, the Secretary shall from time to time pay to each State—

(1) that has a plan for child-welfare services which has been developed as provided in this part and which—

(A) provides that (i) the State agency designated pursuant to section 602(a) (3) of this title to administer or supervise the administration of the plan of the State approved under part A of this subchapter will administer or supervise the administration of such plan for child-welfare services and (ii) to the extent that child-welfare services are furnished by the staff of the State agency or local agency administering such plan for child-welfare services, the organizational unit in such State or local agency established pursuant to section 602(a) (15) of this title will be responsible for furnishing such child-welfare services,

(B) provides for coordination between the services provided under such plan and the services provided for dependent chil-

dren under the State plan approved under part A of this subchapter, with a view to provision of welfare and related services which will best promote the welfare of such children and their families, and

(C) provides, with respect to day care services (including the provision of such care) provided under this subchapter—

(i) for cooperative arrangements with the State health authority and the State agency primarily responsible for State supervision of public schools to assure maximum utilization of such agencies in the provision of necessary health services and education for children receiving day care,

(ii) for an advisory committee, to advise the State public welfare agency on the general policy involved in the provision of day care services under the plan, which shall include among its members representatives of other State agencies concerned with day care or services related thereto and persons representative of professional or civic or other public or nonprofit private agencies, organizations, or groups concerned with the provision of day care,

(iii) for such safeguards as may be necessary to assure provision of day care under the plan only in cases in which it is in the best interest of the child and the mother and only in cases in which it is determined, under criteria established by the State, that a need for such care exists; and, in cases in which the family is able to pay part or all of the costs of such care, for payment of such fees as may be reasonable in the light of such ability,

(iv) for giving priority, in determining the existence of need for such day care, to members of low-income or other groups in the population, and to geographical areas, which have the greatest relative need for extension of such day care, and

(v) that day care provided under the plan will be provided only in facilities (including private homes) which are licensed by the State, or approved (as meeting the standards established for such licensing) by the State agency responsible for licensing facilities of this type, and

(vi) for the development and implementation of arrangements for the more effective involvement of the parent or parents in the appropriate care of the child and the improvement of the health and development of the child, and

(2) that makes a satisfactory showing that the State is extending the provision of child-welfare services in the State, with priority being given to communities with the greatest need for such services after giving consideration to their relative financial need, and with a view to making available by July 1, 1975, in all political subdivisions of the State, for all children in need thereof, child-welfare services provided by the staff (which shall to the extent feasible be composed of trained child-welfare personnel) of the State public welfare agency or of the local agency participating in the administration of the plan in the political subdivision,

except that (effective July 1, 1969, or, if earlier, on the date as of which the modification of the State plan to comply with this requirement with respect to subprofessional staff is approved) such plan shall provide for the training and effective use of paid subprofessional staff with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency, an amount equal to the Federal share (as determined under sec-

tion 623 of this title) of the total sum expended under such plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child-welfare services, in developing State services for the encouragement and assistance of adequate methods of community child-welfare organization, in paying the costs of returning any runaway child who has not attained the age of eighteen to his own community in another State, and of maintaining such child until such return (for a period not exceeding fifteen days), in cases in which such costs cannot be met by the parents of such child or by any person, agency, or institution legally responsible for the support of such child. In developing such services for children, the facilities and experience of voluntary agencies shall be utilized in accordance with child-care programs and arrangements in the State and local communities as may be authorized by the State.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of subsection (a) of this section.

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such prior period under this section.

Aug. 14, 1935, c. 531, Title IV, § 422, as added and amended Jan. 2, 1968, Pub.L. 90–248, Title II, § 240(c), (d), 81 Stat. 912, 915.

1968 Amendment. Subsec. (a) (1). Pub. L. 90–248, § 240(d), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Effective Date of 1968 Amendment; Different State Agencies for Administration of State Plans under Parts A and B. Section 240(e) (3) of Pub.L. 90–248 provided that: "The amendments made by paragraphs (1) and (2) of subsection (d) [enacting subsec. (a) (1) (A) and redesignating former subpars. (A) and (B) of subsec. (a) (1) as (B) and (C)] shall become effective July 1, 1969, except that (A) if on the date of enactment of this Act [Jan. 2, 1968] the agency of a State administering its plan for child-welfare services developed under part B of Title IV of the Social Security Act [this part] is different from the agency of the State designated pursuant to section 402(a) (3) of such Act [section 602(a) (3) of this title], so much of paragraph (1) of section 422(a) of such Act [subsec. (a) of this section] as precedes subparagraph (B) (as added by paragraph (2) of such subsection (d)) shall not apply with respect to such agencies but only so long as such agencies of the State are different, and (B) if on such date [Jan. 2, 1968] the local agency administering the plan of a State for child-welfare services developed under part B of title IV of the Social Security Act [this part] is different from the local agency in such subdivision administering the plan of such State under part A of title IV of such Act [part A of this subchapter], so much of such paragraph (1) as precedes such subparagraph (B) shall not apply with respect to such local agencies but only so long as such local agencies are different."

Overpayments or Underpayments. Section 240(f) (3) of Pub.L. 90–248 provided that in the case of any State which has a plan developed as provided in part 3 of this subchapter as in effect prior to Jan. 2, 1968 (former sections 721–728 of this title) "any overpayment or underpayment which the Secretary determines was made to the State under section 523 of the Social Security Act [former section 723 of this title] and with respect to which adjustment has not then already been made under subsection (b) of such section [subsec. (b) of former section 723 of this title] shall, for purposes of section 422 of such Act [this section] be considered an overpayment or underpayment (as the case may be) made under section 422 of such Act [this section]."

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 623. Allotment percentage and Federal share

(a) The "allotment percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States; except that (1) the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and (2) the allotment percentage shall be 70 per centum in the case of Puerto Rico, the Virgin Islands, and Guam.

(b) The "Federal share" for any State for any fiscal year shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (1) in no case shall the Federal share be less than 33⅓ per centum or more than 66⅔ per centum, and (2) the Federal share shall be 66⅔ per centum in the case of Puerto Rico, the Virgin Islands, and Guam.

(c) The Federal share and the allotment percentage for each State shall be promulgated by the Secretary between July 1 and August 31 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such promulgation: *Provided*, That the Federal shares and allotment percentages promulgated under section 724(c) of this title in 1966 shall be effective for purposes of this section for the fiscal years ending June 30, 1968, and June 30, 1969.

(d) For purposes of this section, the term "United States" means the fifty States and the District of Columbia.

Aug. 14, 1935, c. 531, Title IV, § 423, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 240(c), 81 Stat. 913.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 624. Reallotment of allotments to States

The amount of any allotment to a State under section 621 of this title for any fiscal year which the State certifies to the Secretary will not be required for carrying out the State plan developed as provided in such section shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out their State plans so developed for sums in excess of those previously allotted to them under that section and (2) will be able to use such excess amounts during such fiscal year. Such reallotments shall be made on the basis of the State plans so developed, after taking into consideration the population under the age of twenty-one, and the per capita income of each such State as compared with the population under the age of twenty-one, and the per capita income of all such States with respect to which such a determination by the Secretary has been made. Any amount so reallotted to a State shall be deemed part of its allotment under section 621 of this title.

Aug. 14, 1935, c. 531, Title IV, § 424, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 240(c), 81 Stat. 914.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 625. "Child-welfare services" defined

For purposes of this subchapter, the term "child-welfare services" means public social services which supplement, or substitute for, parental care and supervision for the purpose of (1) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of children of working mothers, and (4) otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible or, where needed, the provision of adequate care of children away from their homes in foster family homes or day-care or other child-care facilities.

Aug. 14, 1935, c. 531, Title IV, § 425, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 240(c), 81 Stat. 914.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 626. Research, training, or demonstration projects—Authorization of appropriations

(a) There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) for grants by the Secretary—

(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services; and

(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships with such stipends and allowances as may be permitted by the Secretary; and

(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.

Payments; advances or reimbursements; installments; conditions

(b) Payments of grants or under contracts or cooperative arrangements under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants, contracts, or other arrangements.

Aug. 14, 1935, c. 531, Title IV, § 426, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 240(c), 81 Stat. 915.

Appropriations or Grants. Section 240 (g) of Pub.L. 90–248 provided that: "Any sums appropriated or grants made pursuant to section 526 of the Social Security Act (as in effect prior to the enactment of this Act) [former section 726 of this title] shall be deemed to have been appropriated or made (as the case may be) under section 426 of the Social Security Act (as added by subsection (c) of this section) [this section]."

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

PART C.—WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID UNDER STATE PLAN APPROVED UNDER PART A

1968 Amendment. Pub.L. 90–248, Title II, § 204(a), Jan. 2, 1968, 81 Stat. 884, added part C heading.

§ 630. Statement of purpose

The purpose of this part is to require the establishment of a program utilizing all available manpower services, including those authorized under other provisions of law, under which individuals receiving aid to families with dependent children will be furnished incentives, opportunities, and necessary services in order for (1) the employment of such individuals in the regular economy, (2) the training of such individuals for work in the regular economy, and (3) the participation of such individuals in special work projects, thus restoring the families of such individuals to independence and useful roles in their communities. It is expected that the individuals participating in the program established under this part will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that

the example of a working adult in these families will have beneficial effects on the children in such families.
Aug. 14, 1935, c. 531, Title IV, § 430, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 884.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 631. Appropriations; transfer of moneys

There is hereby authorized to be appropriated to the Secretary of Health, Education, and Welfare for each fiscal year a sum sufficient to carry out the purposes of this part. The Secretary of Health, Education, and Welfare shall transfer to the Secretary of Labor from time to time sufficient amounts, out of the moneys appropriated pursuant to this section, to enable him to carry out such purposes.
Aug. 14, 1935, c. 531, Title IV, § 431, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 884.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 632. Establishment of programs

(a) The Secretary of Labor (hereinafter in this part referred to as the Secretary) shall, in accordance with the provisions of this part, establish work incentive programs (as provided for in subsection (b) of this section) in each State and in each political subdivision of a State in which he determines there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children. In other political subdivisions, he shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established.

(b) Such programs shall include, but shall not be limited to, (1) a program placing as many individuals as is possible in employment, and utilizing on-the-job training positions for others, (2) a program of institutional and work experience training for those individuals for whom such training is likely to lead to regular employment, and (3) a program of special work projects for individuals for whom a job in the regular economy cannot be found.

(c) In carrying out the purposes of this part the Secretary may make grants to, or enter into agreements with, public or private agencies or organizations (including Indian tribes with respect to Indians on a reservation), except that no such grant or agreement shall be made to or with a private employer for profit or with a private nonprofit employer not organized for a public purpose for purposes of the work experience program established by clause (2) of subsection (b) of this section.

(d) Using funds appropriated under this part, the Secretary, in order to carry out the purposes of this part, shall utilize his authority under the Manpower Development and Training Act of 1962, the Act of June 6 1933, as amended (48 Stat. 113), and other Acts, to the extent such authority is not inconsistent with this chapter.

(e) The Secretary shall take appropriate steps to assure that the present level of manpower services available under the authority of other statutes to recipients of aid to families with dependent children is not reduced as a result of programs under this part.
Aug. 14, 1935, c. 531, Title IV, § 432, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 884.

References in Text. Manpower Development and Training Act of 1962, referred to in subsec. (d), is classified to chapter 30 of this title.
Act of June 6, 1933, as amended (48 Stat. 113), referred to in subsec. (d), is classified to section 49 et seq. of Title 29, Labor.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 633. Operation of program

(a) The Secretary shall provide a program of testing and counseling for all persons referred to him by a State, pursuant to section 602 of this title, and shall select those persons whom he finds suitable for the programs established by clauses (1) and (2) of section 632(b) of this title. Those not so selected shall be deemed suitable for the program established by clause (3) of such section 632(b) of this title unless the Secretary finds that there is good cause for an individual not to participate in such program.

(b) The Secretary shall develop an employability plan for each suitable person referred to him under section 602 of this title which shall describe the education, training, work experience, and orientation which it is determined that each such person needs to complete in order to enable him to become self-supporting.

(c) The Secretary shall make maximum use of services available from other Federal and State agencies and, to the extent not otherwise available on a nonreimbursable basis, he may reimburse such agencies for services rendered to persons under this part.

(d) To the extent practicable and where necessary, work incentive programs established by this part shall include, in addition to the regular counseling, testing, and referral available through the Federal-State Employment Service System, program orientation, basic education, training in communications and employability skills, work experience, institutional training, on-the-job training, job development, and special job placement and followup services, required to assist participants in securing and retaining employment and securing possibilities for advancement.

(e)(1) In order to develop special work projects under the program established by section 632(b)(3) of this title, the Secretary shall enter into agreements with (A) public agencies, (B) private nonprofit organizations established to serve a public purpose, and (C) Indian tribes with respect to Indians on a reservation, under which individuals deemed suitable for participation in such a program will be provided work which serves a useful public purpose and which would not otherwise be performed by regular employees.

(2) Such agreements shall provide—

(A) for the payment by the Secretary to each employer a portion of the wages to be paid by the employer to the individuals for the work performed;

(B) the hourly wage rate and the number of hours per week individuals will be scheduled to work on special work projects of such employer;

(C) that the Secretary will have such access to the premises of the employer as he finds necessary to determine whether such employer is carrying out his obligations under the agreement and this part; and

(D) that the Secretary may terminate any agreement under this subsection at any time.

(3) The Secretary shall establish one or more accounts in each State with respect to the special work projects established and maintained pursuant to this subsection and place into such accounts the amounts paid to him by the State agency pursuant to section 602(a)(19)(E) of this title. The amounts in such accounts shall be available for the payments specified in subparagraph (A) of paragraph (2). At the end of each fiscal year and for such period of time as he may establish, the Secretary shall determine how much of the amounts paid to him by the State agency pursuant to section 602(a)(19)(E) of this title were not expended as provided by the preceding sentence of this paragraph and shall return such unexpended amounts to the State, which amounts shall be regarded as overpayments for purposes of section 603(b)(2) of this title.

(4) No wage rates provided under any agreement entered into under this subsection shall be lower than the applicable minimum wage for the particular work concerned.

(f) Before entering into a project under any of the programs established by this part, the Secretary shall have reasonable assurances that—

(1) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on such project are established and will be maintained,

(2) such project will not result in the displacement of employed workers,

(3) with respect to such project the conditions of work, training, education, and employment are reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant,

(4) appropriate workmen's compensation protection is provided to all participants.

(g) Where an individual, referred to the Secretary of Labor pursuant to section 602(a)(19)(A) (i) and (ii) of this title refuses without good cause to accept employment or participate in a project under a program established by this part, the Secretary of Labor shall (after providing opportunity for fair hearing) notify the State agency which referred such individual and submit such other information as he may have with respect to such refusal.

(h) With respect to individuals who are participants in special work projects under the program established by section 632(b)(3) of this title, the Secretary shall periodically (but at least once every six months) review the employment record of each such individual while on such special work project and on the basis of such record and such other information as he may acquire determine whether it would be feasible to place such individual in regular employment or on any of the projects under the programs established by section 632(b)(1) and (2) of this title.

Aug. 14, 1935, c. 531, Title IV, § 433, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 885.

Payment of Wages for Work for Public Agencies; Transfer into Certain Accounts. Section 204(d) of Pub.L. 90–248 provided that: "During the fiscal year ending June 30, 1969, the Secretary of Labor may, notwithstanding the provisions of section 433(e) (2) (A) of the Social Security Act [section 633(e) (2) (A) of this title], pay all of the wages to be paid by the employer to the individuals for work performed for public agencies (including Indian tribes with respect to Indians on a reservation) under special work projects established under the program established by section 432(b) (3) of such Act [section 632(b) (3) of this title] and may transfer into accounts established pursuant to section 433(e) (3) of such Act [section 633(e) (3) of this title] such amounts as he finds necessary in addition to amounts paid into such accounts pursuant to section 402 (a) (19) (E) of such Act [section 602(a) (19) (E) of this title]."

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 634. Incentive payment

The Secretary is authorized to pay to any participant under a program established by section 632(b)(2) of this title an incentive payment of not more than $30 per month, payable in such amounts and at such times as the Secretary prescribes.

Aug. 14, 1935, c. 531, Title IV, § 434, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 887.

Legislative History: For legislative history and purpose of Pub.L. 90–248 see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 635. Federal assistance

(a) Federal assistance under this part shall not exceed 80 per centum of the costs of carrying out this part. Non-Federal contributions may be cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(b) Costs of carrying out this part include costs of training, supervision, materials, administration, incentive payments, transportation, and other items as are authorized by the Secretary, but may not include any reimbursement for time spent by participants in work, training, or other participation in the program; except that with respect to special work

projects under the program established by section 632(b)(3) of this title, the costs of carrying out this part shall include only the costs of administration.

Aug. 14, 1935, c. 531, Title IV, § 435, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 887.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 636. Period of enrollment

(a) The program established by section 632(b)(2) of this title shall be designed by the Secretary so that the average period of enrollment under all projects under such program throughout any area of the United States will not exceed one year.

(b) Services provided under this part may continue to be provided to an individual for such period as the Secretary determines (in accordance with regulations prescribed by the Secretary after consultation with the Secretary of Health, Education, and Welfare) is necessary to qualify him fully for employment even though his earnings disqualify him from aid under a State plan approved under section 602 of this title.

Aug. 14, 1935, c. 531, Title IV, § 436, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 887.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 637. Relocation of participants

The Secretary may assist participants to relocate their place of residence when he determines such relocation is necessary in order to enable them to become permanently employable and self-supporting. Such assistance shall be given only to participants who concur in their relocation and who will be employed at their place of relocation at wage rates which will meet at least their full need as determined by the State to which they will be relocated. Assistance under this section shall not exceed the reasonable costs of transportation for participants, their dependents, and their household belongings plus such relocation allowance as the Secretary determines to be reasonable.

Aug. 14, 1935, c. 531, Title IV, § 437, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 887.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 638. Participants not Federal employees

Participants in projects under programs established by this part shall be deemed not to be Federal employees and shall not be subject to the provisions of laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

Aug. 14, 1935, c. 531, Title IV, § 438, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 887.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 639. Rules and regulations

The Secretary may issue such rules and regulations as he finds necessary to carry out the purposes of this part: *Provided*, That in developing policies for programs established by this part the Secretary shall consult with the Secretary of Health, Education, and Welfare.

Aug. 14, 1935, c. 531, Title IV, § 439, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 888.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 640. Annual report

The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the work incentive programs established by this part.

Aug. 14, 1935, c. 531, Title IV, § 440, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 888.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 641. Evaluation and research

The Secretary shall (jointly with the Secretary of Health, Education, and Welfare) provide for the continuing evaluation of the work incentive programs established by this part, including their effectiveness in achieving stated goals and their impact on other related programs. He also may conduct research regarding ways to increase the effectiveness of such programs. He may, for this purpose, contract for independent evaluations of and research regarding such programs or individual projects under such programs. For purposes of sections 635 and 643 of this title, the costs of carrying out this section shall no be regarded as costs of carrying out work incentive programs established by this part.

Aug. 14, 1935, c. 531, Title IV, § 441, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 888.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 642. Review of special work projects by a State panel

(a) The Secretary shall make an agreement with any State which is able and willing to do so under which the Governor of the State will create one or more panels to review applications tentatively approved by the Secretary for the special work projects in such State to be established by the Secretary under the program established by section 632(b)(3) of this title.

(b) Each such panel shall consist of not more than five and not less than three members, appointed by the Governor. The members shall include one representative of employers and one representative of employees; the remainder shall be representatives of the general public. No special work project under such program developed by the Secretary pursuant to an agreement under section 633(e)(1) of this title shall, in any State which has an agreement under this section, be established or maintained under such program unless such project has first been approved by a panel created pursuant to this section.

Aug. 14, 1935, c. 531, Title IV, § 442, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 888.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 643. Collection of State share

If a non-Federal contribution of 20 per centum of the costs of the work incentive programs established by this part is not made in any State (as specified in section 602(a) of this title), the Secretary of Health, Education, and Welfare may withhold any action under section 604 of this title because of the State's failure to comply substantially with a provision required by section 602 of this title. If the Secretary of Health, Education, and Welfare does withhold such action, he shall, after reasonable notice and opportunity for hearing to the appropriate State agency or agencies, withhold any payments to be made to the State under sections 303(a), 603(a), 1203(a), 1353(a), 1383(a), and 1396b(a) of this title until the amount so withheld (including any amounts contributed by the State pursuant to the requirement in section 602(a)(19)(C) of this title) equals 20 per centum of the costs of such work incentive programs. Such withholding shall remain in effect until such time as the Secretary has assurances from the State that such 20 per centum will be

contributed as required by section 602 of this title. Amounts so withheld shall be deemed to have been paid to the State under such sections and shall be paid by the Secretary of Health, Education, and Welfare to the Secretary. Such payment shall be considered a non-Federal contribution for purposes of section 635 of this title.

Aug. 14, 1935, c. 531, Title IV, § 443, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 888.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 644. Agreements with other agencies providing assistance to families of unemployed parents

(a) The Secretary is authorized to enter into an agreement (in accordance with the succeeding provisions of this section) with any qualified State agency (as described in subsection (b) of this section) under which the program established by the preceding sections of this part C will (except as otherwise provided in this section) be applicable to individuals referred by such State agency in the same manner, to the same extent, and under the same conditions as such program is applicable with respect to individuals referred to the Secretary by a State agency administering or supervising the administration of a State plan approved by the Secretary of Health, Education, and Welfare under part A of this subchapter.

(b) A qualified State agency referred to in subsection (a) of this section is a State agency which is charged with the administration of a program—

(1) the purpose of which is to provide aid or assistance to the families of unemployed parents,

(2) which is not established pursuant to part A of subchapter IV of this chapter,

(3) which is financed entirely from funds appropriated by the Congress, and

(4) none of the financing of which is made available under any program established pursuant to title V of the Economic Opportunity Act.

(c)(1) Any agreement under this section with a qualified State agency shall provide that such agency will, with respect to all individuals receiving aid or assistance under the program of aid or assistance to families of unemployed parents administered by such agency, comply with the requirements imposed by section 602(a)(15) of this title and section 602(a)(19)(F) of this title in the same manner and to the same extent as if (A) such qualified agency were the agency in such State administering or supervising the administration of a State plan approved under part A of this subchapter, and (B) individuals receiving aid or assistance under the program administered by such qualified agency were recipients of aid under a State plan which is so approved.

(2) Any agreement entered into under this section shall remain in effect for such period as may be specified in the agreement by the Secretary and the qualified State agency, except that, whenever the Secretary determines, after reasonable notice and opportunity for hearing to the qualified State agency, that such agency has failed substantially to comply with its obligations under such agreement, the Secretary may suspend operation of the agreement until such time as he is satisfied that the State agency will no longer fail substantially to comply with its obligations under such agreement.

(3) Any such agreement shall further provide that the agreement will be inoperative for any calendar quarter if, for the preceding calendar quarter, the maximum amount of benefits payable under the program of aid or assistance to families of unemployed parents administered by the qualified State agency which is a party to such agreement is lower than the maximum amount of benefits payable under such program for the quarter which ended September 30, 1967.

(d) The Secretary shall, at the request of any qualified State agency referred to in subsection (a) of this section and upon receipt from it of a list of the names of individuals rereferred to the Secretary, furnish to such agency the names of each individual on such list participating in a special work project under section 633(a)(3) of this title whom the Secretary determines should continue to participate in such project. The Secretary shall not comply with any such request with respect to an individual on such list unless such individual has been referred to the Secretary by such agency under such section 602(a)(15) of this title for a period of at least six months.

Aug. 14, 1935, c. 531, Title IV, § 444, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 204(a), 81 Stat. 889.

References in Text. Title V of the Economic Opportunity Act, referred to in subsec. (b) (4), is classified to section 2921 et seq. of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

SUBCHAPTER V.—MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES

Codification. This subchapter as added by Pub.L. 90–248, Title III, § 301, Jan. 2, 1968, 81 Stat. 921, constitutes a general amendment of the provisions of a prior subchapter, as enacted Aug. 14, 1935, c. 531, Title V, 49 Stat. 629, and amended thereafter.

Such prior subchapter provided for maternal and child health and crippled children's services. Provisions of such prior subchapter related to the following subject matter:

Sections 701–705, maternal and child health services;

Sections 711–716, services for crippled children;

Sections 721–728, child-welfare services;

Sections 729, 729–1, 729a, maternity and infant care projects, projects for health of school and preschool children, and research projects; and

Section 731, administration.

§ 701. Appropriation

For the purpose of enabling each State to extend and improve (especially in rural areas and in areas suffering from severe economic distress), as far as practicable under the conditions in such State,

(1) services for reducing infant mortality and otherwise promoting the health of mothers and children; and

(2) services for locating, and for medical, surgical, corrective, and other services and care for and facilities for diagnosis, hospitalization, and aftercare for, children who are crippled or who are suffering from conditions leading to crippling,

there are authorized to be appropriated $250,000,000 for the fiscal year ending June 30, 1969, $275,000,000 for the fiscal year ending June 30, 1970, $300,000,000 for the fiscal year ending June 30, 1971, $325,000,000 for the fiscal year ending June 30, 1972, and $350,000,000 for the fiscal year ending June 30, 1973, and each fiscal year thereafter.

Aug. 14, 1935, c. 531, Title V, § 501, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 921.

Codification. A prior section 701, Acts Aug. 14, 1935, c. 531, Title V, § 501, 49 Stat. 629; Aug. 10, 1939, c. 666, Title V, § 501, 53 Stat. 1380; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 401(b) (1), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 3, § 331(a), Pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub.L. 85–840, Title VI, § 602(a), 72 Stat. 1054; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(a) (1) (A), 74 Stat. 995; Oct. 24, 1963, Pub.L. 88–156, § 2(a), 77 Stat. 273; July 30, 1965, Pub.L. 89–97, Title II, § 201(a), 79 Stat. 353, authorized appropriations, for maternal and child health services, of $25,000,000; $30,000,000; $35,000,000; $45,000,000; $50,000,000; $55,000,000; $55,000,000; and $60,000,000 for fiscal years ending June 30, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970 and each fiscal year thereafter, respectively.

Prior Provisions. Provisions similar to those comprising this section were contained in section 511 of Act Aug. 14, 1935, c. 531, Title V, 49 Stat. 631, as amended (formerly classified to section 711 of this title), and sections 531(a), 532(a), and 533(a) [formerly 532(a)] of Act Aug. 14, 1935, c. 531, Title V, as added Oct. 24, 1963, Pub.L. 88–156, § 4, 77 Stat. 274; July 30, 1965, Pub.L. 89–97, Title II, § 205(3), 79 Stat. 354; Oct. 24, 1963, Pub.L. 88–156, § 4, 77 Stat. 274, renumbered July 30, 1965, Pub.L. 89–97, Title II, § 205(2), 79 Stat. 354 (formerly classified to sections 729(a), 729–1(a), and 729a(a) of this title), prior to the general amendment and renumbering of Title V of Act Aug. 14, 1935, by Pub.L. 90–248, § 301.

Effective Date. Section 301 of Pub.L. 90–248 provided in part that this subchapter (as otherwise amended by Pub.L. 90–248) shall be effective with respect to fiscal years beginning after June 30, 1968.

Short Title. Section 306 of Pub.L. 90–248 provided that: "This title [which enacted this subchapter, amended sections 705(a) (3), [former] 729(a), 1396a(a) (4), and 1396d(a) (4) of this title, enacted provisions set out as notes under this section and section 705 of this title, and

amended provisions set out as a note under section 242b of this title] may be cited as the 'Child Health Act of 1967'."

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 702. Purposes for which funds are available

Appropriations pursuant to section 701 of this title shall be available for the following purposes in the following proportions:

(1) In the case of the fiscal year ending June 30, 1969, and each of the next 3 fiscal years, (A) 50 percent of the appropriation for such year shall be for allotments pursuant to sections 703 and 704 of this title; (B) 40 percent thereof shall be for grants pursuant to sections 708, 709, and 710 of this title; and (C) 10 percent thereof shall be for grants, contracts, or other arrangements pursuant to sections 711 and 712 of this title.

(2) In the case of the fiscal year ending June 30, 1973, and each fiscal year thereafter, (A) 90 percent of the appropriation for such years shall be for allotments pursuant to sections 703 and 704 of this title; and (B) 10 percent thereof shall be for grants, contracts, or other arrangements pursuant to sections 711 and 712 of this title.

Not to exceed 5 percent of the appropriation for any fiscal year under this section shall be transferred, at the request of the Secretary, from one of the purposes specified in paragraph (1) or (2) to another purpose or purposes so specified. For each fiscal year, the Secretary shall determine the portion of the appropriation, within the percentage determined above to be available for sections 703 and 704 of this title, which shall be available for allotment pursuant to section 703 of this title and the portion thereof which shall be available for allotment pursuant to section 704 of this title. Notwithstanding the preceding provisions of this section, of the amount appropriated for any fiscal year pursuant to section 701 of this title, not less than 6 percent of the amount appropriated shall be available for family planning services from allotments under section 703 of this title and for family planning services under projects under sections 708 and 712 of this title.

Aug. 14, 1935, c. 531, Title V, § 502, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 921.

Codification. A prior section 702, Act Aug. 14, 1935, c. 531, Title V, § 502, 49 Stat. 629; Aug. 10, 1939, c. 666, Title V, § 502, 53 Stat. 1380; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Acts Aug. 10, 1946, c. 951, Title IV, § 401(b) (2, 3), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 3, § 331(h), Pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub.L. 85–840, Title VI, § 602(b) (c), 72 Stat. 1055; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(a) (1) (B), (C), (b) (1) (A), 74 Stat. 995, 996; Oct. 24, 1963, Pub.L. 88–156, § 2(b), (c), 77 Stat. 273, provided for allotment to States for maternal and child health services, and is now covered by section 703 of this title.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 703. Allotments to States for maternal and child health services

The amount determined to be available pursuant to section 702 of this title for allotments under this section shall be allotted for payments for maternal and child health services as follows:

(1) One-half of such amount shall be allotted by allotting to each State $70,000 plus such part of the remainder of such one-half as he finds that the number of live births in such State bore to the total number of live births in the United States in the latest calendar year for which he has statistics.

(2) The remaining one-half of such amount shall (in addition to the allotments under paragraph (1)) be allotted to the States from time to time according to the financial need of each State for assistance in carrying out its State plan, as determined by the Secretary after taking into consideration the number of live births in such State; except that not more than 25 percent of such one-half shall be available for grants to State agencies (administering or supervising the administration of a State plan approved under section 705

of this title), and to public or other nonprofit institutions of higher learning (situated in any State), for special projects of regional or national significance which may contribute to the advancement of maternal and child health.

Aug. 14, 1935, c. 531, Title V, § 503, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 922.

Codification. A prior section 703, Acts Aug. 14, 1935, c. 531, Title V, § 503, 49 Stat. 630; Aug. 10, 1939, c. 666, Title V, § 503, 53 Stat. 1380; 1946 Reorg.Plan No. 2, §§ 1, ,4 eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Acts Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), 64 Stat. 558; July 30, 1965, Pub.L. 89–97, Title II, § 204(a), 79 Stat. 354, related to contents of State plans for maternal and child health services and their approval by the Administrator, and is now covered by section 705 of this title.

Prior Provisions. Provisions similar to those comprising this section were contained in section 502 of Act Aug. 14, 1935, c. 531, Title V, 49 Stat. 629, as amended (formerly classified to section 702 of this title), prior to the general amendment and renumbering of Title V of Act Aug. 14, 1935, by Pub.L. 90–248, § 301.

Special Projects for Mentally Retarded Children. Pub.L. 90–132, Title II, § 200, Nov. 8, 1967, 81 Stat. 403, provided in part: "That $4,750,000 of the amount available under section 502(b) of such Act [former section 702(b) of this title, now par. (2) of this section] shall be used only for special projects for mentally retarded children, and $3,750,000 of the amount available under section 512(b) of such Act [former section 712(b), now section 704(2)], shall be used only for special projects for services for crippled children who are mentally retarded."

Similar Provisions were contained in the following prior Appropriation Acts:

1966—Pub.L. 89–787, Title II, § 200, Nov. 7, 1966, 80 Stat. 1396.

1965—Pub.L. 89–156, Title II, § 200, Aug. 31, 1965, 79 Stat. 605.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 703a. State plans; obstetrical services; approval by Administrator

Repealed. Pub.L. 89–156, Title II, § 200, Aug. 31, 1965, 79 Stat. 605; Pub.L. 89–787, Title II, § 200, Nov. 7, 1966, 80 Stat. 1397, Pub.L. 90–132, Title II, § 200, Nov. 8, 1967, 81 Stat. 404.

§ 704. Allotments to States for crippled children's services

The amount determined to be available pursuant to section 702 of this title for allotments under this section shall be allotted for payments for crippled children's services as follows:

(1) One-half of such amount shall be allotted by allotting to each State $70,000 and allotting the remainder of such one-half according to the need of each State as determined by him after taking into consideration the number of crippled children in such State in need of the services referred to in paragraph (2) of section 701 of this title and the cost of furnishing such services to them.

(2) The remaining one-half of such amount shall (in addition to the allotments under paragraph (1)) be allotted to the States from time to time according to the financial need of each State for assistance in carrying out its State plan, as determined by the Secretary after taking into consideration the number of crippled children in each State in need of the services referred to in paragraph (2) of section 701 of this title and the cost of furnishing such services to them; except that not more than 25 percent of such one-half shall be available for grants to State agencies (administering or supervising the administration of a State plan approved under section 705 of this title), and to public or other nonprofit institutions of higher learning (situated in any State), for special projects of regional or national significance which may contribute to the advancement of services for crippled children.

Aug. 14, 1935, c. 531, Title V, § 504, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 922.

Codification. A prior section 704, Act Aug. 14, 1935, c. 531, Title V, § 504, 49 Stat. 630; 1940 Reorg.Plan No. III, § 1(a), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), 64 Stat. 558; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(b) (1) (B), 74 Stat. 996; July 30, 1965, Pub.L. 89–97, Title II, § 201(b), 79 Stat. 353, provided for payment to States with an approved plan for maternal and child-health services, computation of amounts, and prescribed general availability of services by July 1, 1975, as requisite for payments for any period after June 30, 1966, and is now covered by section 706 of this title.

Prior Provisions. Provisions similar to those comprising this section were contained in section 512 of Act Aug. 14, 1935, c. 531, Title V, 49 Stat. 631, as amended (formerly classified to section 712 of this title), prior to the general amendment and renumbering of Title V of Act Aug. 14, 1935, by Pub.L. 90–248, § 301.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 704a. Allotments excluded from computation

Repealed. Pub.L. 89–156, Title II, § 200, Aug. 31, 1965, 79 Stat. 605; Pub.L. 89–787, Title II, § 200, Nov. 7, 1966, 80 Stat. 1396, Pub.L. 90–132, Title II, § 200, Nov. 8, 1967, 81 Stat. 404.

§ 705. State plans; contents; approval by Administrator

(a) In order to be entitled to payments from allotments under section 702 of this title, a State must have a State plan for maternal and child health services and services for crippled children which—

(1) provides for financial participation by the State;

(2) provides for the administration of the plan by the State health agency or the supervision of the administration of the plan by the State health agency; except that in the case of those States which on July 1, 1967, provided for administration (or supervision thereof) of the State plan approved under section 713 of this title (as in effect on such date) by a State agency other than the State health agency, the plan of such State may be approved under this section if it would meet the requirements of this subsection except for provision of administration (or supervision thereof) by such other agency for the portion of the plan relating to services for crippled children, and, in each such case, the portion of such plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter;

(3) provides (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are necessary for the proper and efficient operation of the plan and (B) provides for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency;

(4) provides that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports;

(5) provides for cooperation with medical, health, nursing, educational, and welfare groups and organizations and, with respect to the portion of the plan relating to services for crippled children, with any agency in such State charged with administering State laws providing for vocational rehabilitation of physically handicapped children;

(6) provides for payment of the reasonable cost (as determined in accordance with standards approved by the Secretary and included in the plan) of inpatient hospital services provided under the plan;

(7) provides, with respect to the portion of the plan relating to services for crippled children, for early identification of children in need of health care and services, and for health care and treatment needed to correct or ameliorate defects or chronic conditions discovered thereby, through provision of such periodic screening and diagnostic services, and such treatment, care and other measures to correct or ameliorate defects or chronic conditions, as may be provided in regulations of the Secretary;

(8) effective July 1, 1972, provides a program (carried out directly or through grants or contracts) of projects described in section 708 of this title which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily

helping to reduce the incidence of mental retardation and other handicapping conditions caused by complications associated with child bearing and of satisfactorily helping to reduce infant and maternal mortality;

(9) effective July 1, 1972, provides a program (carried out directly or through grants or contracts) of projects described in section 709 of this title which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily promoting the dental health of children and youth of school or preschool age;

(10) effective July 1, 1972, provides a program (carried out directly or through grants or contracts) of projects described in section 710 of this title which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily promoting the dental health of child and youth of school or preschool age;

(11) provides for carrying out the purposes specified in section 701 of this title;

(12) provides for the development of demonstration services (with special attention to dental care for children and family planning services for mothers) in needy areas and among groups in special need,

(13) provides that, where payment is authorized under the plan for services which an optometrist is licensed to perform, the individual for whom such payment is authorized may, to the extent practicable, obtain such services from an optometrist licensed to perform such services except where such services are rendered in a clinic, or another appropriate institution, which does not have an arrangement with optometrists so licensed; and

(14) provides that acceptance of family planning services provided under the plan shall be voluntary on the part of the individual to whom such services are offered and shall not be a prerequisite to eligibility for or the receipt of any service under the plan.

(b) The Secretary shall approve any plan which meets the requirements of subsection (a) of this section.

Aug. 14, 1935, c. 531, Title V, § 505, as added and amended Jan. 2, 1968, Pub.L. 90–248, Title III, §§ 301, 304(a), 81 Stat. 923, 929.

Codification. A prior section 705, Act Aug. 14, 1935, c. 531, Title V, § 505, 49 Stat. 631; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), 64 Stat. 558, provided for stopping payment on failure to comply with plan for maternal and child health services, and is now covered by section 707 of this title.

1968 Amendment. Subsec. (a) (3). Pub. L. 90–248, § 304(a), designated existing provisions as subpar. (A) and added subpar. (B).

Prior Provisions. Provisions similar to those comprising this section were contained in sections 503 and 513 of Act Aug. 14, 1935, c. 531, Title V, 49 Stat. 630, 632, as amended (formerly classified to sections 703 and 713 of this title), prior to the general amendment and renumbering of Title V of Act Aug. 14, 1935, by Pub.L. 90–248, § 301.

Effective Date of 1968 Amendment. Section 304(b) of Pub.L. 90–248 provided that: "The amendment made by this section [amending this section] shall become effective July 1, 1969, or, if earlier (with respect to a State) on the date as of which the modification of the State plan to comply with such amendment is approved."

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 706. Payments to States; computation of amounts

(a) From the sums appropriated therefor and the allotments available under section 703(1) or 704(1) of this title, as the case may be, the Secretary shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing July 1, 1968, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan with respect to maternal and child health services and services for crippled children, respectively.

(b)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection

(a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigations as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of an estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c) The Secretary shall also from time to time make payments to the States from their respective allotments pursuant to section 703(2) or 704(2) of this title. Payments of grants under sections 703(2), 704(2), 708, 709, 710, and 711 of this title, and of grants, contracts, or other arrangements under section 712 of this title, may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the section involved.

(d) The total amount determined under subsections (a) and (b) of this section and the first sentence of subsection (c) of this section for any fiscal year ending after June 30, 1968, shall be reduced by the amount by which the sum expended (as determined by the Secretary) from non-Federal sources for maternal and child health services and services for crippled children for such year is less than the sum expended from such sources for such services for the fiscal year ending June 30, 1968. In the case of any such reduction, the Secretary shall determine the portion thereof which shall be applied, and the manner of applying such reduction, to the amounts otherwise payable from allotments under section 703 or section 704 of this title.

(e) Notwithstanding the preceding provisions of this section, no payment shall be made to any State thereunder from the allotments under section 703 or section 704 of this title for any period after June 30, 1968, unless the State makes a satisfactory showing that it is extending the provision of services, including services for dental care for children and family planning for mothers, to which such State's plan applies in the State with a view to making such services available by July 1, 1975, to children and mothers in all parts of the State.

Aug. 14, 1935, c. 531, Title V, § 506, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 924.

Prior Provisions. Provisions similar to those comprising this section were contained in sections 504 and 514 of Act Aug. 14, 1935, c. 531, Title V, 49 Stat. 630, 632, as amended (formerly classified to sections 704 and 714 of this title), prior to the general amendment and renumbering of Title V of Act Aug. 14, 1935, by Pub.L. 90–248, § 301.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 707. Operation of State plans

If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this subchapter, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 705 of this title; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be

limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

Aug. 14, 1935, c. 531, Title V, § 507, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 925.

Prior Provisions. Provisions similar to those comprising this section were contained in sections 505 and 515 of Act Aug. 14, 1935, c. 531, Title V, 49 Stat. 631, 633, as amended (formerly classified to sections 705 and 715 of this title), prior to the general amendment and renumbering of Title V of Act Aug. 14, 1935, by Pub.L. 90–248, § 301.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 708. Special project grants for maternity and infant care

(a) In order to help reduce the incidence of mental retardation and other handicapping conditions caused by complications associated with childbearing and to help reduce infant and maternal mortality, the Secretary is authorized to make, from the sums available under clause (B) of paragraph (1) of section 702 of this title, grants to the State health agency of any State and, with the consent of such agency, to the health agency of any political subdivision of the State, and to any other public or nonprofit private agency, institution, or organization, to pay not to exceed 75 percent of the cost (exclusive of general agency overhead) of any project for the provision of—

(1) necessary health care to prospective mothers (including after childbirth, health care to mothers and their infants) who have or are likely to have conditions associated with childbearing or are in circumstances which increase the hazards to the health of the mothers or their infants (including those which may cause physical or mental defects in the infants), or

(2) necessary health care to infants during their first year of life who have any condition or are in circumstances which increase the hazards to their health, or

(3) family planning services,

but only if the State or local agency determines that the recipient will not otherwise receive such necessary health care or services because he is from a low-income family or for other reasons beyond his control. Acceptance of family planning services provided under a project under this section (and section 712 of this title) shall be voluntary on the part of the individual to whom such services are offered and shall not be a prerequisite to the eligibility for or the receipt of any service under such project.

(b) No grant may be made under this section for any project for any period after June 30, 1972.

Aug. 14, 1935, c. 531, Title V, § 508, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 926.

Prior Provisions. Provisions similar to those comprising this section were contained in section 531 of Act Aug. 14, 1935, c. 531, Title V, as added Oct. 24, 1963, Pub.L. 88–156, § 4, 77 Stat. 274 (formerly classified to section 729 of this title), prior to the general amendment and renumbering of Title V of Act Aug. 14, 1935, by Pub.L. 90–248, § 301.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 709. Special project grants for health of school and preschool children

(a) In order to promote the health of children and youth of school or preschool age, particularly in areas with concentrations of low-income families, the Secretary is authorized to make, from the sums available under clause (B) of paragraph (1) of section 702 of this title, grants to the State health agency of any State and (with the consent of such agency) to the health agency of any political subdivision of the State, to the State agency of the State administering or supervising the administration of the State plan approved under section 705 of this title, to

any school of medicine (with appropriate participation by a school of dentistry), and to any teaching hospital affiliated with such a school, to pay not to exceed 75 percent of the cost of projects of a comprehensive nature for health care and services for children and youth of school age or for preschool children (to help them prepare to start school). No project shall be eligible for a grant under this section unless it provides (1) for the coordination of health care and services provided under it with, and utilization (to the extent feasible) of, other State or local health, welfare, and education programs for such children, (2) for payment of the reasonable cost (as determined in accordance with standards approved by the Secretary) of inpatient hospital services provided under the project and (3) that any treatment, correction of defects, or aftercare provided under the project is available only to children who would not otherwise receive it because they are from low-income families or for other reasons beyond their control; and no such project for children and youth of school age shall be considered to be of a comprehensive nature for purposes of this section unless it includes (subject to the limitation in the preceding provisions of this sentence) at least such screening, diagnosis, preventive services, treatment, correction of defects, and aftercare, both medical and dental, as may be provided for in regulations of the Secretary.

(b) No grant may be made under this section for any project for any period after June 30, 1972.

Aug. 14, 1935, c. 531, Title V, § 509, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 926.

Prior Provisions. Provisions similar to those comprising this section were contained in section 532 of Act Aug. 14, 1935, c. 531, Title V, as added July 30, 1965, Pub.L. 89–97, Title II, § 205(3), 79 Stat. 354 (formerly classified to section 729—1 of this title), prior to the general amendment and renumbering of Title V of Act Aug. 14, 1935, by Pub.L. 90-248, § 301.

Report to Congress; Evaluation of Program. Section 206 of Pub.L. 89–97, Title II, July 30, 1965, 79 Stat. 354 provided that: "The Secretary shall submit to the President for transmission to the Congress before July 1, 1969, a full report of the administration of the provisions of section 532 of the Social Security Act (as added by section 205 of this Act) [former section 729–1 of this title, now covered by sections 701 and 702 (1) (B) of this title and this section], together with an evaluation of the program established thereby and his recommendations as to continuation of and modifications in that program."

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 710. Special project grants for dental health of children

(a) In order to promote the dental health of children and youth of school or preschool age, particularly in areas with concentrations of low-income families, the Secretary is authorized to make grants, from the sums available under clause (B) of paragraph (1) of section 702 of this title, to the State health agency of any State and (with the consent of such agency) to the health agency of any political subdivision of the State, and to any other public or nonprofit private agency, institution, or organization, to pay not to exceed 75 percent of the cost of projects of a comprehensive nature for dental care and services for children and youth of school age or for preschool children. No project shall be eligible for a grant under this section unless it provides that any treatment, correction of defects, or aftercare provided under the project is available only to children who would not otherwise receive it because they are from low-income families or for other reasons beyond their control, and unless it includes (subject to the limitation of the foregoing provisions of this sentence) at least such preventive services, treatment, correction of defects, and aftercare, for such age groups, as may be provided in regulations of the Secretary. Such projects may also include research looking toward the development of new methods of diagnosis or treatment, or demonstration of the utilization of dental personnel with various levels of training.

(b) No grant may be made under this section for any project for any period after June 30, 1972.

Aug. 14, 1935, c. 531, Title V, § 510, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 927.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 711. Training of personnel

From the sums available under clause (C) of paragraph (1) or clause (B) of paragraph (2) of section 702 of this title, the Secretary is authorized to make grants to public or nonprofit private institutions of higher learning for training personnel for health care and related services for mothers and children, particularly mentally retarded children and children with multiple handicaps. In making such grants, the Secretary shall give special attention to programs providing training at the undergraduate level.

Aug. 14, 1935, c. 531, Title V, § 511, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 927.

Codification. A prior section 711, Acts Aug. 14, 1935, c. 531, Title V, § 511, 49 Stat. 631; Aug. 10, 1939, c. 666, Title V, § 504, 53 Stat. 1380; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 401(b) (4), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 3, § 331(c), Pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub.L. 85–840, Title VI, § 603(a), 72 Stat. 1055; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(a) (2) (A), 74 Stat. 995; Oct. 24, 1963, Pub.L. 88–156, § 3(a), 77 Stat. 273; July 30, 1965, Pub.L. 89–97, Title II, § 202(a), 79 Stat. 353, authorized appropriations, for services for crippled children, of $25,000,000; $30,000,000; $35,000,000; $45,000.000; $50,000,000; $55,000,000; $55,000,000; and $60,000,000 for fiscal years ending June 30, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970 and thereafter, respectively, and is now covered by section 701 of this title.

Prior Provisions. Provisions similar to those comprising this section were contained in section 516 of Act Aug. 14, 1935, c. 531, Title V, as added July 30, 1965, Pub.L. 89–97, Title II, § 203(a), 79 Stat. 353 (formeriy classified to section 716 of this title), prior to the general amendment and renumbering of Title V of Act Aug. 14, 1935, by Pub.L. 90–248, § 301.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 712. Research projects relating to maternal and child health services and crippled children's services

From the sums available under clause (C) of paragraph (1) or clause (B) of paragraph (2) of section 702 of this title, the Secretary is authorized to make grants to or jointly financed cooperative arrangements with public or other nonprofit institutions of higher learning, and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or crippled children's programs, and contracts with public or nonprofit private agencies and organizations engaged in research or in such programs, for research projects relating to maternal and child health services or crippled children's services which show promise of substantial contribution to the advancement thereof. Effective with respect to grants made and arrangements entered into after June 30, 1968, (1) special emphasis shall be accorded to projects which will help in studying the need for, and the feasibility, costs, and effectiveness of, comprehensive health care programs in which maximum use is made of health personnel with varying levels of training, and in studying methods of training for such programs, and (2) grants under this section may also include funds for the training of health personnel for work in such projects.

Aug. 14, 1935, c. 531, Title V, § 512, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 927.

Codification. A prior section 712, Act Aug. 14, 1935, c. 531, Title V, § 512, 49 Stat. 631; Aug. 10, 1939, c. 666, Title V, § 505, 53 Stat. 1380; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 401(b) (5, 6), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 3. § 331(d), Pt. 6, § 361(e), 64 Stat. 552, 558; Aug. 28, 1958, Pub.L. 85–840, Title VI, § 603(b), (c), 72 Stat. 1055; Sept. 13, 1960, Pub. L. 86–778, Title VII, § 707(a) (2) (B), (C), (b) (2) (A), 74 Stat. 996; Oct. 24, 1963, Pub.L. 88–156, § 3(b), (c), 77 Stat. 274, provided for allotment to States for services for crippled children, and is now covered by section 704 of this title.

Prior Provisions. Provisions similar to those comprising this section were contained in section 533, formerly section 532, of Act Aug. 14, 1935, c. 531, Title V, as added Oct. 24, 1963, Pub.L. 88–156, § 4, 77 Stat. 274, and renumbered July 30, 1965, Pub.L. 89–97. title II, § 205(2), 79 Stat. 354 (formerly classified to section 729a of this title), prior to the general amendment and renumbering of Title V of Act Aug. 14, 1935, by Pub.L. 90–248, § 301.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 713. Administration

(a) The Secretary of Health, Education, and Welfare shall make such studies and investigations as will promote the efficient administration of this subchapter.

(b) Such portion of the appropriations for grants under section 701 of this title as the Secretary may determine, but not exceeding one-half of 1 percent thereof, shall be available for evaluation by the Secretary (directly or by grants or contracts) of the programs for which such appropriations are made and, in the case of allotments from any such appropriation, the amount available for allotments shall be reduced accordingly.

(c) Any agency, institution, or organization shall, if and to the extent prescribed by the Secretary, as a condition to receipt of grants under this subchapter, cooperate with the State agency administering or supervising the administration of the State plan approved under subchapter XIX of this chapter in the provision of care and services, available under a plan or project under this subchapter, for children eligible therefor under such plan approved under subchapter XIX of this chapter.

Aug. 14, 1935, c. 531, Title V, § 513, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 928.

Codification. A prior section 713, Acts Aug. 14, 1935, c. 531, Title V, § 513, 49 Stat. 632; Aug. 10, 1939, c. 666, Title V, § 506, 53 Stat. 1381; 1946 Reorg.Plan No. 2, §§ 1, 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), 64 Stat. 558; July 30, 1965, Pub.L. 89–97, Title II, § 204(b), 79 Stat. 354, related to contents of State plans for services for crippled children and their approval by the Administrator, and is now covered by section 705 of this title.

Prior Provisions. Provisions similar to those comprising this section were contained in section 541 of Act Aug. 14, 1935, c. 531, Title V, 49 Stat. 634, as amended (formerly classified to section 731 of this title), prior to the general amendment and renumbering of Title V of Act Aug. 14, 1935, by Pub.L. 90–248, § 301.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 714. "Crippled child" defined

For purposes of this subchapter, a crippled child is an individual under the age of 21 who has an organic disease, defect, or condition which may hinder the achievement of normal growth and development.

Aug. 14, 1935, c. 531, Title V, § 514, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 928.

Codification. A prior section 714, Act Aug. 14, 1935, c. 531, Title V, § 514, 49 Stat. 632; Aug. 10, 1939, c. 666, Title V, § 507(a), (b), 53 Stat. 1381; 1940 Reorg. Plan No. III, § 1(a) (1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), 64 Stat. 558; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(b) (2) (B), 74 Stat. 996, July 30, 1965, Pub.L. 89–97, Title II, §§ 202(b), 203(b), 79 Stat. 353, 354, provided for payment to States with an approved plan for services for crippled children, computation of amounts, and prescribed general availability of services by July 1, 1975, as requisite for payments for any period after June 30, 1966, and is now covered by section 706 of this title.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 715. Observance of religious beliefs

Nothing in this subchapter shall be construed to require any State which has any plan or program approved under, or receiving financial support under, this subchapter to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan or program for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

Aug. 14, 1935, c. 531, § 515, as added Jan. 2, 1968, Pub.L. 90–248, Title III, § 301, 81 Stat. 928.

Codification. A prior section 715, Act Aug. 14, 1935, c. 531, Title V, § 515, 49 Stat. 633; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Act Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), 64 Stat. 558, provided for stop-

ping payment on failure to comply with State plan for services for crippled children, and is now covered by section 707 of this title

Section 716, Act Aug. 14, 1935, c. 531, Title V, § 516, as added July 30, 1965, Pub.L. 89–97, Title II, § 203(a), 79 Stat. 353, authorized appropriations, for training of professional personnel for health and related care of crippled and mentally retarded children, of $5,000,000; $10,000,000; and $17,500,000 for fiscal years ending June 30, 1967, 1968, 1969, and thereafter, respectively, and is now covered by sections 702(1) (C), (2) (B), and 711 of this title.

Sections 721–728, Act Aug. 14, 1935, c. 531, Title V, §§ 521–528, were repealed by Pub.L. 90–248, Title II, § 240(e) (1), Jan. 2, 1968, 81 Stat. 915. Such sections were amended or enacted and provided for subject matter as described hereunder.

Section 721, Acts Aug. 14, 1935, c. 531, Title V, § 521, 49 Stat. 633; Aug. 10, 1939, c. 666, Title V, § 507(c), 53 Stat. 1381; 1940 Reorg.Plan No. III, § 1(a) (1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg.Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 401(b) (7), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 3, § 331(e), Pt. 6, § 361(c), 64 Stat. 552, 558; Aug. 1, 1956, c. 836, Title IV, § 402, 70 Stat. 856; Aug. 28, 1958, Pub.L. 85–840, Title VI, § 601, 72 Stat. 1052; Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(a) (3) (A), 74 Stat. 996; July 25, 1962, Pub.L. 87–543, Title I, § 102(a), (d) (1), 76 Stat. 182, 184; July 30, 1965, Pub.L. 89–97, Title II, § 207, 79 Stat. 355, authorized appropriations for child-welfare services and is now covered by section 620 of this title.

Section 722, Act Aug. 14, 1935, c. 531, Title V, § 522, as added Aug. 28, 1958, Pub. L. 85–840, Title VI, § 601, 72 Stat. 1053, and amended Sept. 13, 1960, Pub.L. 86–778, Title VII, § 707(a) (3) (B), 74 Stat. 996; July 25, 1962, Pub.L. 87–543, Title I, § 102 (c) (1), 76 Stat. 183; July 30, 1965, Pub.L. 89–97, Title II, § 208(b), 79 Stat. 355, provided for allotments to States and is now covered by section 621 of this title.

Section 723, Act Aug. 14, 1935, c. 531, Title V, § 523, as added Aug. 28, 1958, Pub. L. 85–840, Title VI, § 601, 72 Stat. 1053, and amended July 25, 1962, Pub.L. 87–543, Title I, § 102(b), 76 Stat. 182; July 30, 1965, Pub.L. 89–97, Title II, § 208(c), 79 Stat. 356, provided for payment to States and computation of amounts and is now covered by section 622 of this title.

Section 724, Act Aug. 14, 1935, c. 531, Title V, § 524, as added Aug. 28, 1958, Pub. L. 85–840, Title VI, § 601, 72 Stat. 1054, and amended June 25, 1959, Pub.L. 86–70, § 32(b), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, § 30(b), 74 Stat. 420, provided for allotment percentage and Federal share and is now covered by section 623 of this title.

Section 725, Act Aug. 14, 1935, c. 531, Title V, § 525, as added Aug. 28, 1958, Pub. L. 85–840, Title VI, § 601, 72 Stat. 1054, provided for reallotment of allotments to States and is now covered by section 624 of this title.

Section 726, Act Aug. 14, 1935, c. 531, Title V, § 526, as added Sept. 13, 1960, Pub. L. 86–778, Title VII, § 707(b) (3), 74 Stat. 997, and amended July 25, 1962, Pub.L. 87–543, Title I, § 123(d), 76 Stat. 193, provided for research, training, or demonstration projects and is now covered by section 626 of this title.

Section 727, Act Aug. 14, 1935, c. 531, Title V, § 527, as added July 25, 1962, Pub. L. 87–543, Title I, § 102(c) (2), 76 Stat. 183, provided for allotments and reallotment of allotments to States for day care services. Section had been previously repealed by Pub.L. 89–97, Title II, § 208(a) (1), July 30, 1965, 79 Stat. 355, effective Jan. 1, 1966, under section 208(d) of Pub. L. 89–97.

Section 728, Act Aug. 14, 1935, c. 531, Title V, § 528, as added July 25, 1962, Pub. L. 87–543, Title I, § 102(d) (2), 76 Stat. 184, defined child-welfare "services" and is now covered by section 625 of this title.

Section 729, Act Aug. 14, 1935, c. 531, Title V, § 531, as added Oct. 24, 1963, Pub.L. 88–156, § 4, 77 Stat. 274, and amended Jan. 2, 1968, Pub.L. 90–248, Title III, § 303, 81 Stat. 929, related to maternity and infant care projects, authorized appropriations of $5,000,000; $15,000,000; $30,000,000; and $35,000,000 for fiscal years ending June 30, 1964, 1965, 1966 and 1967, and 1968, respectively; provided for grants to State health agencies, limitations on payments, scope of projects, health hazards, low-income families, other reasons for lack of health care; and provided for payments to States, adjustments, advances or reimbursement, installments, and conditions, and is now covered by sections 701, 702(1) (B), and 708 of this title.

Section 729—1, Act 1935, c. 531, Title V, § 532, as added July 30, 1965, Pub.L. 89–97, Title II, § 205(3), 79 Stat. 354, provided for projects for health of school and preschool children, authorized appropriations of $15,000,000; $35,000,000; $40,000,000; $45,000,000; and $50,000,000 for fiscal years ending June 30, 1966, 1967, 1968, 1969, and 1970, respectively; provided for grants to State health agencies, medical and dental schools, and teaching hospitals, limitations on payments, eligibility for grants, comprehensive care and services; and provided for payments to States, adjustments, advances or reimbursement, installments, and conditions, and is now covered by sections 701, 702(1) (B), and 709 of this title.

Section 729a, Act Aug. 14, 1935, c. 531, Title V, § 533, formerly § 532, as added Oct. 24, 1963, Pub.L. 88–156, § 4, 77 Stat. 274, and renumbered July 30, 1965, Pub.L. 89–97, Title II, § 205(2), 79 Stat. 354, provided for research projects relating to maternal and child health services and crippled children's services, authorized appropriations of $8,000,000 for fiscal year ending June 30, 1964, and each subsequent fiscal year; and provided for payments to eligible institutions, agencies, and organizations, adjustments, advances or reimbursements, installments, and conditions, and is now covered by sections 701, 702(1) (C), (2) (B), and 712 of this title.

Section 731, Act Aug. 14, 1935, c. 531, Title V, § 541, 49 Stat. 634; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title IV, § 401(b) (8), 60 Stat. 986; Aug. 28, 1950, c. 809, Title III, Pt. 6, § 361(e), Title IV, § 402(a), 64 Stat. 558, required the Administrator to make studies and investigations to promote efficient administration of former section 701–703, 704, 705, 711–715, 721–729a, and 731 of this title, and is now covered by section 713(a) of this title.

Legislative History. For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

SUBCHAPTER VII.—ADMINISTRATION

§ 902. Duties of Secretary of Health, Education, and Welfare and the Secretary of Labor

Index to Notes

1. Power of Congress

Congress has delegated to Secretary duty of administering this chapter, and making factual determinations and conclusions within guidelines set out in statute. Gardner v. Bishop, C.A.Okl.1966, 362 F.2d 917.

§ 907. Advisory Council on Social Security—Initial and quinquennial appointment; review of status of Funds, scope of coverage, adequacy of benefits, impact on public assistance, and other program aspects

(a) During 1969 (but not before February 1, 1969) and every fourth year, thereafter (but not before February 1 of such fourth year), the Secretary shall appoint an Advisory Council on Social Security for the purpose of reviewing the status of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund in relation to the long-term commitments of the old-age, survivors, and disability insurance program and the programs under parts A and B of subchapter XVIII of this chapter, and of reviewing the scope of coverage and the adequacy of benefits under, and all other aspects of, these programs, including their impact on the public assistance programs under this chapter.

Membership; Chairman; representation of interests

(b) Each such Council shall consist of a Chairman and 12 other persons, appointed by the Secretary without regard to the provisions of Title 5, governing appointments in the competitive service. The appointed members shall, to the extent possible, represent organizations of employers and employees in equal numbers, and represent self-employed persons and the public.

Technical assistance; actuarial services; availability of assistance and data; compensation and travel expenses

(c) (1) Any Council appointed hereunder is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary shall, in addition, make available to such Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health, Education, and Welfare as it may require to carry out such functions.

(2) Appointed members of any such Council, while serving on business of the Council (inclusive of travel time), shall receive compensation at rates fixed by the Secretary, but not exceeding $100 per day and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government employed intermittently.

Reports to Congress; termination of Council

(d) Each such Council shall submit reports (including any interim reports such Council may have issued) of its findings and recommendations to the Secretary not later than January 1 of the second year after the year in which it is appointed, and such reports and recommendations shall thereupon be transmitted to the Congress and to the Board of Trustees of each of the Trust Funds. The reports required by this subsection shall include—

(1) a separate report with respect to the old-age, survivors, and disability insurance program under subchapter II of this chapter and

of the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of Title 26,

(2) a separate report with respect to the hospital insurance program under part A of subchapter XVIII of this chapter and of the taxes imposed by sections 1401(b), 3101(b), and 3111(b) of Title 26, and

(3) a separate report with respect to the supplementary medical insurance program established by part B of subchapter XVIII of this chapter and of the financing thereof.

After the date of the transmittal to the Congress of the reports required by this subsection, the Council shall cease to exist.

Aug. 14, 1935, c. 531, Title VII, § 706, as added July 30, 1965, Pub.L. 89–97, Title I, § 109(a), 79 Stat. 339, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, § 165, Title IV, § 403(d), 81 Stat. 874, 932.

1968 Amendment. Subsec. (a). Pub.L. 90–248, § 165(a) (1), substituted "During 1969 (but not before February 1, 1969) and every fourth year thereafter (but not before February 1 of such fourth year)" for "During 1968 and every fifth year thereafter".

Subsec. (b). Pub.L. 90–248, §§ 165(b), 403(d) (1) substituted "a Chairman" for "the Commissioner of Social Security, as Chairman,", and "provisions of Title 5, governing appointments in the competitive service" for "civil service laws".

Subsec. (c) (2). Pub.L. 90–248, § 403(d) (2), substituted reference to section 5703 for former section 73b—2 of Title 5.

Subsec. (d). Pub.L. 90–248, § 165(a) (2), inserted "(including any interim reports such Council may have issued)" following "reports".

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 908. Grants for expansion and development of undergraduate and graduate programs—Authorization of appropriations; minimum sums for undergraduate programs

(a) There is authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1969, and $5,000,000 for each of the three succeeding fiscal years, for grants by the Secretary to public or nonprofit private colleges and universities and to accredited graduate schools of social work or an association of such schools to meet part of the costs of development, expansion, or improvement of (respectively) undergraduate programs in social work and programs for the graduate training of professional social work personnel, including the costs of compensation of additional faculty and administrative personnel and minor improvements of existing facilities. Not less than one-half of the sums appropriated for any fiscal year under the authority of this subsection shall be used by the Secretary for grants with respect to undergraduate programs.

Personnel trained in social work; relative need in the States

(b) In considering applications for grants under this section, the Secretary shall take into account the relative need in the States for personnel trained in social work and the effect of the grants thereon.

Payments; adjustments; advances or reimbursement; terms and conditions; installments

(c) Payment of grants under this section may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and on such terms and conditions and in such installments, as the Secretary may determine.

Definitions

(d) For purposes of this section—

(1) the term "graduate school of social work" means a department, school, division, or other administrative unit, in a public or nonprofit private college or university, which provides, primarily or exclusively, a program of education in social work and allied subjects leading to a graduate degree in social work;

(2) the term "accredited" as applied to a graduate school of social work refers to a school which is accredited by a body or

bodies approved for the purpose by the Commissioner of Education or with respect to which there is evidence satisfactory to the Secretary that it will be so accredited within a reasonable time; and

(3) the term "nonprofit" as supplied to any college or university refers to a college or university which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Aug. 14, 1935, c. 531, Title VII, § 707, as added Jan. 2, 1968, Pub.L. 90–248, Title IV, § 401, 81 Stat. 930.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

SUBCHAPTER IX.—EMPLOYMENT SECURITY ADMINISTRATIVE FINANCING

§ 1103. Amounts transferred to State accounts

* * * * * * * * * *

Use of funds

(c) (1) * * * *

* * * * * * * * * *

(2) A State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it for the administration of its unemployment compensation law and public employment offices if and only if—

(D) the appropriation law limits the total amount which may be obligated during a fiscal year to an amount which does not exceed the amount by which (i) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b) of this section during such fiscal year and the fourteen preceding fiscal years, exceeds (ii) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State during such fifteen fiscal years.

For the purposes of subparagraph (D), amounts used by a State during any fiscal year shall be charged against equivalent amounts which were first transferred and which have not previously been so charged; except that no amount obligated for administration during any fiscal year may be charged against any amount transferred during a fiscal year earlier than the fourteenth preceding fiscal year.

As amended July 26, 1968, Pub.L. 90–430, 82 Stat. 447.

1968 Amendment. Subsec. (c). Pub.L. 90–430 substituted in par. (2) (D) (i) "fourteen" for "nine", in par. (2) (D) (ii) "fifteen" for "ten", and in material following par. (2) (D) "fourteenth" for "ninth".

Legislative History: For legislative history and purpose of Pub.L. 90–430, see 1968 U. S. Code Cong. and Adm. News, p. —.

SUBCHAPTER X.—GRANTS TO STATES FOR AID TO THE BLIND

§ 1201. Appropriations

Index to Notes

1. Construction with other laws

McKinney's N.Y. Social Services Law, §§ 104, 104–a, 105, 360 providing for, inter alia, liens on real property interests of welfare recipients and on potential or actual recoveries for personal injuries, and for assignment of interests of insured recipients in life insurance policies, did not conflict with this section and sections 601 and 1351 relating to aid to families with dependent children and to assistance for the blind and disabled so as to be invalid under the supremacy clause. Snell v. Wyman, D.C.N.Y.1968, 281 F. Supp. 853.

§ 1202. State plans for aid to blind

(a) A State plan for aid to the blind must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title or aid to families with dependent children under the State plan approved under section 602 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency shall disregard (A) the first $85 per month of earned income, plus one-half of earned income in excess of $85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $7.50 of any income; (9) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to the blind; (10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (13) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

As amended July 30, 1965, Pub.L. 89–97, Title IV, § 403(c), 79 Stat. 418; Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 210(a) (3), 213 (a) (2), 81 Stat. 895, 898.

* * * * * * * * * *

1968 Amendment. Subsec. (a) (5). Pub. L. 90–248, § 210(a) (3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a) (8) (C). Pub.L. 90–248, § 213 (a) (2), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965 Amendment. Subsec. (a) (8). Pub. L. 89–97, § 403(c), added clause (C).

Effective Date of 1968 Amendment. Amendment of subsec. (a) (5) by section 210(a) (3) of Pub.L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub.L. 90–248, set out as a note under section 302 of this title.

Effective Date of 1965 Amendment. Section 403(c) of Pub.L. 89–97 provided that the amendment of subsec. (a) (8) of this section by said section was effective October 1, 1965.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U. S. Code Cong. and Adm. News, p. 2834.

Supplementary Index to Notes

Employment and discharge of state personnel 4

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4. Employment and discharge of state personnel

Employee who was discharged as head of county office of state department of welfare and whose discharge was found to be without cause by state review board had no cause of action against administrative head of state department and members of county board of public welfare under federal Constitution and federal statutory and regulatory requirements even though she had not been reinstated in her position. Norton v. Blaylock. D.C.Ark.1968, 285 F.Supp. 659.

Requirements of federal grants-in-aid programs that states set up and operate under personnel merit systems expresses Congressional policy in favor of security for state welfare employees who have attained permanent status. Id.

§ 1203. Payment to States; computation of amounts

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the blind under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) $31/37$ of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $37 multiplied by the total number of recipients of aid to the blind for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received aid to the blind in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the blind in the form of medical or any other type of remedial care); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $75 multiplied by the total number of such recipients of aid to the blind for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multi-

plied by the total number of recipients of aid to the blind for such month; and

(3) in the case of any State whose State plan approved under section 1202 of this title meets the requirements of subsection (c) (1) of this section, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

* * * * * * * * * *

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

As amended July 30, 1965, Pub.L. 89–97, Title I, § 122, Title IV, § 401 (d), 79 Stat. 353, 415; Jan. 2, 1968, Pub.L. 90–248, Title II, § 212(b), 81 Stat. 897.

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1968 Amendment. Subsec. (a) (3) (D). Pub.L. 90–248 inserted ", except to the extent specified by the Secretary" following "shall" in the introductory text to subpar. (D).

1965 Amendment. Subsec. (a) (1). Pub.L. 89–97, §§ 122, 401(d), inserted "premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other" after "expenditures for" in parenthetical phrase appearing in so much of par. (1) as precedes clause (A); and substituted "31/37" and "$37" for "29/35" and "$35" in subpar. (A) and "$75" for "$70" in subpar. (B), respectively.

Subsec. (a) (2). Pub.L. 89–97, § 122, inserted "premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other" after "expenditures for" in parenthetical phrase.

Effective Date of 1968 Amendment. Amendment by Pub.L. 90–248 effective Jan. 1, 1968, see section 212(e) of Pub.L. 90–248, set out as a note under section 303 of this title.

Effective Date of 1965 Amendment. Amendment of subsec. (a) (1) of this section by section 401 of Pub.L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a state plan approved under subchapter I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub.L. 89–97, set out as a note under section 303 of this title.

Nonduplication of Payments to States; Prohibition of Payments after Dec. 31, 1969. Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub.L. 89–97, set out as a note under section 1396b of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S. Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm. News, p. 2834.

§ 1204. Operation of State plans

In the case of any State plan for aid to the blind which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

* * * * * * * * * *

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to such categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to the State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

As amended Jan. 2, 1968, Pub.L. 90–248, Title II, § 245, 81 Stat. 918.

1968 Amendment. Pub.L. 90–248 inserted "(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)" after "further payments will not be made to the State" and substituted in last sentence "further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)" for "further certification to the Secretary of the Treasury with respect to such State".

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm. News, p. 2834.

§ 1206. "Aid to the blind" defined

For the purposes of this subchapter, the term "aid to the blind" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in

behalf of or any type of remedial care recognized under State law in behalf of, blind individuals who are needy, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1202 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the blind to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) of this subsection for any individual with respect to whom it is made.

As amended July 30, 1965, Pub.L. 89–97, Title II, § 221(b), Title IV, § 402(c), 79 Stat. 358, 416.

1965 Amendment. Pub.L. 89–97, §§ 221 (b), 402(c), deleted from the definition of "aid to the blind" the exclusion of payments to or medical care in behalf of any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof; and extended the definition of "aid to the blind" to include payments made on behalf of the needy individual to another individual who (as determined in accordance with standards determined by the Secretary) is interested in or concerned with the welfare of such needy individual and enumerated the five characteristics required of state plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs of the individual, special efforts to protect welfare, periodic review, and opportunity for fair hearing, respectively.

Effective Date of 1965 Amendment. Amendment of this section by section 221 of Pub.L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub.L. 89–97, set out as a note under section 303 of this title.

Amendment of section by section 402 (c) of Pub.L. 89–97, applicable in the case of expenditures made after December 31, 1965, under a state plan approved under subchapters I, X, XIV, or XVI of this chapter, see section 402(e) of Pub.L. 89–97, set out as a note under section 306 of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

SUBCHAPTER XI.—GENERAL PROVISIONS

§ 1301. Definitions

(a) When used in this chapter—

(1) The term "State", except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and

when used in subchapters I, IV, V, VII, X, XI, XIV, XVI, and XIX of this chapter includes the Virgin Islands and Guam.

As amended July 30, 1965, Pub.L. 89–97, Title I, § 121(c) (1), 79 Stat. 352.

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1965 Amendment. Subsec. (a) (1). Pub. L. 89–97, § 121(c) (1), included in the enumeration subchapter XIX of this chapter.

Effective Date of 1965 Amendment. Section 121(c) (1) of Pub.L. 89–97 provided in part that the amendment of subsec. (a) (1) by Pub.L. 89–97 shall be effective Jan. 1, 1966.

Definition of "Secretary". Section 404 of Pub.L. 90–248, Title IV, Jan. 2, 1968, 81 Stat. 933, provided that: "As used in the amendments made by this Act [see Short Title note under section 302 of this title] (unless the context otherwise requires), the term 'Secretary' means the Secretary of Health, Education, and Welfare."

Section 110 of Pub.L. 89–97 provided that: "As used in this Act [Social Security Amendments of 1965, see Short Title note under section of this title], and in the provisions of the Social Security Act amended by this Act [this chapter], the term 'Secretary' unless the context otherwise requires, means the Secretary of Health, Education, and Welfare."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1306. Disclosure of information in possession of Department of Health, Education, and Welfare or Department of Labor; compliance with requests for information and services

* * * * * * * * * *

(b) Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the Secretary of Health, Education, and Welfare or the Secretary of Labor, as the case may be, to avoid undue interference with their respective functions under this chapter, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the Secretary of Health, Education, and Welfare or the Secretary of Labor, as the case may be. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the Secretary of Health, Education, and Welfare or the Secretary of Labor, as the case may be, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the Department of Health, Education, and Welfare or the Department of Labor, as the case may be, which furnished the information or services.

(c)(1)(A) Upon request (filed in accordance with paragraph (2) of this subsection) of any State or local agency participating in administration of the State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, or participating in the administration of any other State or local public assistance program, for the most recent address of any individual included in the files of the Department of Health, Education, and Welfare maintained pursuant to section 405 of this title, the Secretary shall furnish such address, or the address of the most recent employer, or both, if such agency certifies that—

(i) an order has been issued by a court of competent jurisdiction against such individual for the support and maintenance of his child or children who are under the age of 16 in destitute or necessitous circumstances,

(ii) such child or children are applicants for or recipients of assistance available under such a plan or program,

(iii) such agency has attempted without success to secure such information from all other sources reasonably available to it, and

(iv) such information is requested (for its own use, or on the request and for the use of the court which issued the order) for the purposes of obtaining such support and maintenance.

(B) If a request for the most recent address of any individual so included is filed (in accordance with paragraph (2) of this subsection) by a court having jurisdiction to issue orders or entertain petitions against individuals for the support and maintenance of their children, the Secretary shall furnish such address, or the address of the individual's most recent employer, or both, for the use of the court (and for no other purpose) in issuing or determining whether to issue such an order against such individual or in determining (in the event such individual is not within the jurisdiction of the court) the court to which a petition for support and maintenance against such individual should be forwarded under any reciprocal arrangements with other States to obtain or improve court orders for support, if the court certifies that the information is requested for such use.

(2) A request under paragraph (1) of this subsection shall be filed in such manner and form as the Secretary may prescribe (and, in the case of a request under paragraph (1) (A), shall be accompanied by a certified copy of the order referred to in clauses (i) and (iv) thereof).

(3) The penalties provided in the second sentence of subsection (a) of this section shall apply with respect to use of information provided under paragraph (1) of this subsection except for the purpose authorized by subparagraph (A) (iv) or (B) thereof.

(4) The Secretary, in such cases and to such extent as he may prescribe in accordance with regulations, may require payment for the cost of information provided under paragraph (1) of this subsection; and the provisions of the second sentence of subsection (b) of this section shall apply also with respect to payment under this paragraph.

As amended July 30, 1965, Pub.L. 89–97, Title I, § 108(c), Title III, § 340, 79 Stat. 339, 411; Jan. 2, 1968, Pub.L. 90–248, Title I, § 168, Title II, § 241(c), 81 Stat. 875, 917.

1968 Amendment. Subsec. (c) (1). Pub. L. 90–248, § 241(c) (1), deleted "IV," following "I," and inserted "or part A of subchapter IV of this chapter," after "XIX of this chapter,".

Subsec. (c) (1) (A), (B). Pub.L. 90–248, § 168(a), designated existing provisions as subpar. (A), redesignated former subpars. (A)–(D) as cls. (i)–(iv) thereof, and added subpar. (B).

Subsec. (c) (2). Pub.L. 90–248, § 168(b) (1), substituted "(and, in the case of a request under paragraph (1) (A), shall be accompanied by a certified copy of the order referred to in clauses (i) and (iv) thereof)" for ", and shall be accompanied by a certified copy of the order referred to in paragraph (1) (A) of this subsection".

Subsec. (c) (3). Pub.L. 90–248, § 168(b) (2), substituted "authorized by subparagraph (A) (iv) or (B)" for "authorized by subparagraph (D)".

1965 Amendment. Subsec. (b). Pub.L. 89–97, § 108(c), provided for use of special deposit in the Treasury (made up of payments for information and services furnished) to reimburse authorizations to make expenditures from the Federal Hospital Insurance Trust Fund and the Supplementary Medical Insurance Trust Fund.

Subsec. (c). Pub.L. 89–97, § 340, added subsec. (c).

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm. News, p. 2834.

Supplementary Index to Notes

Restriction of disclosure 3

2. Privileged statements

The Secretary cannot, by regulation, prevent the production of documents in his care, custody and control, when plaintiff in a federal tort claim action has moved for their production under rule 34, Federal Rules of Civil Procedure, 28 U.S.C.A., after a showing of good cause and where the defendant has made no claim of privilege. Merchants Nat. Bank & Trust Co. of Fargo v. U. S., D.C.N.D.1966, 41 F.R.D. 266.

3. Restriction of disclosure

While this chapter gives the Secretary the right to restrict disclosure, judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers. Merchants Nat. Bank & Trust Co. of Fargo v. U. S., D.C.N.D. 1966, 41 F.R.D. 266.

§ 1308. Limitation on payments to Puerto Rico, the Virgin Islands, and Guam

(a) The total amount certified by the Secretary of Health, Education, and Welfare under subchapter I, X, XIV, and XVI, and under part A of subchapter IV of this chapter (exclusive of any amounts on account of services and items to which subsection (b) of this section applies)—

(1) for payment to Puerto Rico shall not exceed—

(A) $12,500,000 with respect to the fiscal year 1968,

(B) $15,000,000 with respect to the fiscal year 1969,
(C) $18,000,000 with respect to the fiscal year 1970,
(D) $21,000,000 with respect to the fiscal year 1971, or
(E) $24,000,000 with respect to the fiscal year 1972 and each fiscal year thereafter;

(2) for payment to the Virgin Islands shall not exceed—
(A) $425,000 with respect to the fiscal year 1968,
(B) $500,000 with respect to the fiscal year 1969,
(C) $600,000 with respect to the fiscal year 1970,
(D) $700,000 with respect to the fiscal year 1971, or
(E) $800,000 with respect to the fiscal year 1972 and each fiscal year thereafter; and

(3) for payment to Guam shall not exceed—
(A) $575,000 with respect to the fiscal year 1968,
(B) $690,000 with respect to the fiscal year 1969,
(C) $825,000 with respect to the fiscal year 1970,
(D) $960,000 with respect to the fiscal year 1971, or
(E) $1,100,000 with respect to the fiscal year 1972 and each fiscal year thereafter.

(b) The total amount certified by the Secretary under part A of subchapter IV of this chapter, on account of family planning services and services provided under section 602(a)(19) of this title with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed $2,000,000,
(2) for payment to the Virgin Islands shall not exceed $65,000, and
(3) for payment to Guam shall not exceed $90,000.

(c) The total amount certified by the Secretary under subchapter XIX of this chapter with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed $20,000,000,
(2) for payment to the Virgin Islands shall not exceed $650,000, and
(3) for payment to Guam shall not exceed $900,000.

(d) Notwithstanding the provisions of sections 702(a) and 712(a) of this title, and the provisions of sections 621, 703(1), and 704(1) of this title as amended by the Social Security Amendments of 1967, and until such time as the Congress may by appropriation or other law otherwise provide, the Secretary shall, in lieu of the initial allotment specified in such sections, allot such smaller amounts to Guam as he may deem appropriate.

As amended July 30, 1965, Pub.L. 89–97, Title II, § 208(a) (2), Title IV, § 408(a), 79 Stat. 355, 422; Jan. 2, 1968, Pub.L. 90–248, Title II, § 248 (a) (1), 81 Stat. 918.

1968 Amendment. Pub.L. 90–248 amended section generally and, among other changes, raised the present $9.8 million limit for Federal financial participation in the public assistance programs of Puerto Rico to $12.5 million for fiscal 1968 with further increases in succeeding fiscal years to a maximum of $24 million for fiscal 1972 and each fiscal year thereafter, increased the dollar maximums for the Virgin Islands from $330,000 to $800,000 for fiscal 1972 and thereafter and for Guam from $450,000 to $1.1 million for fiscal 1972 and thereafter, authorized payments for family planning services and services referred to in section 602(a) (19) of this title, with respect to any fiscal year, of not more than $2 million for Puerto Rico, $65,000 for the Virgin Islands, and $90,000 for Guam, imposed a maximum on Federal payments for the medical assistance program under subchapter XIX of this chapter, with respect to any fiscal year, of $20 million for Puerto Rico, $650,000 for the Virgin Islands, and $900 000 for Guam, and provided that notwithstanding sections 702 (a) and 712(a) of this title and sections 621, 703(1), and 704(1) of this title, as amended by the Social Security Amendments of 1967, and until Congress otherwise provides, the Secretary shall, in lieu of the initial allotments specified in such sections, allot smaller amounts to Guam as he deems appropriate.

1965 Amendment. Pub.L. 89–97, § 208 (a) (2), substituted "and 722(a)" for "722 (a) and 727(a)" and struck out "(or, in the case of section 727(a) of this title)" following "in lieu of the initial".

Pub.L. 89–97, § 408(a), removed the limitation requiring that, with respect to any fiscal year, $625,000 of the $9,800,000 certified for payments to Puerto Rico, $18,750 of the $330,000 certified for payments to the Virgin Islands, and $25,000 of the $450,000 certified for payments to Guam, be used only for payments with respect to section 303(a) (2) (B) or 1383 (a) (2) (B) of this title.

Effective Date of 1968 Amendment. Section 248(a) (2) of Pub.L. 90–248 provided that: "The amendment made by paragraph (1) [to this section] shall apply with respect to fiscal years beginning after June 30, 1967."

Effective Date of 1965 Amendment. Amendment of this section by section 208 (a) (2) of Pub.L. 89–97 effective Jan. 1, 1966, see section 208(d) of Pub.L. 89–97, set out as a note under section 722 of this title.

Section 408(b) of Pub.L. 89–97 provided that: "The amendments made by subsection (a) [to this section] shall be effective in the case of Puerto Rico, the Virgin Islands, or Guam with respect to fiscal years beginning on or after the date on which its plan under title XIX of the Social Security Act [section 1396 et seq. of this title] is approved."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U. S. Code Cong. and Adm. News, p. 2834.

§ 1309. Amounts disregarded not to be taken into account in determining eligibility of other individuals

Any amount which is disregarded (or set aside for future needs) in determining the eligibility of and amount of the aid or assistance for any individual under a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, shall not be taken into consideration in determining the eligibility of and amount of aid or assistance for any other individual under a State plan approved under any other of such subchapters.

As amended July 30, 1965, Pub.L. 89–97, Title I, § 121(c) (2), 79 Stat. 352; Jan. 2, 1968, Pub.L. 90–248, Title II, § 241(c) (2), 81 Stat. 917.

1968 Amendment. Pub.L. 90–248 deleted "IV," following "I," and inserted ", or part A of subchapter IV of this chapter," after "XIX of this chapter".

1965 Amendment. Pub.L. 89–97 substituted requirement that amounts disregarded be not taken into account in determining eligibility of other individuals for former provisions which had provided that: "Notwithstanding the provisions of sections 302(a) (10) (A), 602(a) (7), 1202 (a) (8), 1352(a) (8), and 1382(a) (14) of this title, a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter may until June 30, 1954, and thereafter shall provide that where earned income has been disregarded in determining the need of an individual receiving aid to the blind under a State plan approved under subchapter X of this chapter, the earned income so disregarded (but not in excess of the amount specified in section 1202(a) (8) of this title) shall not be taken into consideration in determining the need of any other individual for assistance under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U. S. Code Cong. and Adm. News, p. 2834.

§ 1310. Cooperative research or demonstration projects

(a) There are authorized to be appropriated for the fiscal year ending June 30, 1957, $5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (1) making grants to States and public and other nonprofit organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under this chapter and programs related thereto, and (2) making contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters.

As amended Jan. 2, 1968, Pub.L. 90–248, Title II, § 246, 81 Stat. 918.

* * * * * * * * * *

1968 Amendment. Subsec. (a). Pub.L. 90–248 deleted in clause (2) "nonprofit" preceding "organizations".

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U. S. Code Cong. and Adm. News, p. 2384.

§ 1311. Public assistance payments to legal representatives

For purposes of subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, payments on behalf of an individual, made to another person who has been judicially appointed, under the law of the State in which such individual resides, as legal representative of such individual for the purpose of receiving and managing such payments (whether or not he is such individual's legal representative for other purposes), shall be regarded as money payments to such individual.

As amended Jan. 2, 1968, Pub.L. 90–248, Title II, § 241(c)(3), 81 Stat. 917.

1968 Amendment. Pub.L. 90–248 deleted "IV," following "I," and inserted "and part A of subchapter IV of this chapter," after "XVI of this chapter,".

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm. News, p. 2834.

§ 1312. Medical care guides and reports for public assistance and medical assistance

1965 Amendment. Pub.L. 89–97, Title IV, § 408(c), July 30, 1965, 79 Stat. 422, struck out "for the aged" following "medical assistance" in the section catchline.

§ 1313. Assistance for United States citizens returned from foreign countries

* * * * * * * * * *

Termination date

(d) No temporary assistance may be provided under this section after June 30, 1969.

As amended Pub.L. 90–36, § 2, June 29, 1967, 81 Stat. 94; Jan. 2, 1968, Pub.L. 90–248, Title II, § 241(c) (2), 81 Stat. 917.

1968 Amendment. Subsec. (d). Pub.L. 90–248 extended termination date from June 30, 1968, to June 30, 1969.

1967 Amendment. Subsec. (d). Pub.L. 90–36 extended termination date from June 30, 1967, to June 30, 1968.

Legislative History: For legislative history and purpose of Pub.L. 90–36, see 1967 U.S.Code Cong. and Adm. News, p. 1289. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm. News, p. 2834.

§ 1314. Public advisory groups

* * * * * * * * * *

Membership and representation of interests on initial Council

(b) The Council shall be appointed by the Secretary without regard to the provisions of Title 5 governing appointments in the competitive service and shall consist of twelve persons who shall, to the extent possible, be representatives of employers and employees in equal numbers, representatives of State or Federal agencies concerned with the administration or financing of the public assistance and child welfare services programs, representatives of nonprofit private organizations concerned with social welfare programs, other persons with special knowledge, experience, or qualifications with respect to such programs, and members of the public.

* * * * * * * * * *

Advisory committees; functions; reports by Secretary

(f) The Secretary may also appoint, without regard to the provisions of Title 5 governing appointments in the competitive service, such advisory committees as he may deem advisable to advise and consult with him in carrying out any of his functions under this chapter. The Secretary shall report to the Congress annually on the number of such committees and on the membership and activities of each such committee.

Compensation and travel expenses

(g) Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $75 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in Government service employed intermittently.

As amended Jan. 2, 1968, Pub.L. 90–248, Title IV, § 403(e), 81 Stat. 932.

* * * * * * * * * *

1968 Amendment. Subsec. (b). Pub.L. 90–248, § 403(e) (1), substituted "provisions of Title 5, governing appointments in the competitive service" for "civil-service laws".

Subsec. (f). Pub.L. 90–248, § 403(e) (2), substituted "provisions of Title 5, governing appointments in the competitive service" for "civil-service laws".

Subsec. (g). Pub.L. 90–248, § 403(e) (3), substituted reference to section 5703 for former section 73b—2 of Title 5.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U. S. Code Cong. and Adm. News, p. 2834.

§ 1315. Demonstration projects; waiver of State plan requirements; costs regarded as State plan expenditures; availability of appropriations

In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, in a State or States—

(a) the Secretary may waive compliance with any of the requirements of section 302, 602, 1202, 1352, 1382, or 1396a of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(b) costs of such project which would not otherwise be included as expenditures under section 303, 603, 1203, 1353, 1383, or 1396b of this title, as the case may be, and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such subchapter, or for administration of such State plan or plans, as may be appropriate.

In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such subchapters for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such subchapters and is not included as part of the cost of projects for purposes of section 1310 of this title.

As amended July 30, 1965, Pub.L. 89–97, Title I, § 121(c) (3), 79 Stat. 352; June 29, 1967, Pub.L. 90–36, § 2, 81 Stat. 94; Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 241(c) (4), 247, 81 Stat. 917, 918.

1968 Amendment. Pub.L. 90–248, § 241 (c) (4), in the opening phrase deleted "IV," following "I," and inserted ", or part A of subchapter IV of this chapter," after "XIX of this chapter".

Pub.L. 90–248, § 247, substituted in second sentence "$4,000,000" for "$2,000,000" and "beginning after June 30, 1967" for "ending prior to July 1, 1968".

1967 Amendment. Pub.L. 90–36 substituted "July 1, 1968" for "July 1, 1967."

1965 Amendment. Pub.L. 89–97 included in the enumeration in the opening phrase, and clauses (a) and (b), subchapter XIX of this chapter, and sections 1396a and 1396b of this title, respectively.

Effective Date of 1965 Amendment. Section 121(c) (3) of Pub.L. 89–97 provided in part that the amendment of this section by Pub.L. 89–97 shall be effective Jan. 1, 1966.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–36, 1967 U.S. Code Cong. and Adm. News, p. 1289; Pub.L. 90–248, 1967 U.S. Code Cong. and Adm. News, p. 2834.

§ 1316. Administrative and judicial review of public assistance determinations

(a) (1) Whenever a State plan is submitted to the Secretary by a State for approval under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, he shall, not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such title. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such title. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the

Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 304, 604, 1204, 1354, 1384, or 1396c of this title may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28.

(4) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(5) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) For the purposes of subsection (a) of this section, any amendment of a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, may, at the option of the State, be treated as the submission of a new State plan.

(c) Action pursuant to an initial determination of the Secretary described in subsection (a) of this section shall not be stayed pending reconsideration, but in the event that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

Aug. 14, 1935, c. 531, Title XI, § 1116, as added July 30, 1965, Pub.L. 89–97, Title IV, § 404(a), 79 Stat. 419, and amended Jan. 2, 1968, Pub.L. 90–248, Title II, § 241(c) (5), 81 Stat. 917.

1968 Amendment. Subsec. (a) (1). Pub. L. 90–248, § 241(c) (5) (A), deleted "IV," following "I," and inserted "or part A of subchapter IV of this chapter," after "XIX of this chapter,".

Subsecs. (b), (d). Pub.L. 90–248, § 241 (c) (5) (B), deleted "IV," following "I," and inserted ", or part A of subchapter IV of this chapter," after "XIX of this chapter".

Effective Date. Section 404(b) of Pub. L. 89–97 provided that: "The amendment made by subsection (a) [adding this section] shall apply only with respect to determinations made after December 31, 1965."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm. News, p. 2834.

Index to Notes

1. Construction with other laws

Reference in section 2000d–2 of this title to judicial review as may otherwise be provided by law is not limited to the judicial review already in existence when said section was enacted, and does not preclude judicial review in accordance with this section declaring that any state dissatisfied with final determination of Secretary may file petition for review with Court of Appeals. Gardner v. State of Ala. for and in Behalf of Dept. of Pensions and Sec., C.A.Ala.1967, 385 F.2d 804, certiorari denied 88 S.Ct. 773, 389 U.S. 1046, 19 L.Ed.2d 839.

Notwithstanding absence of specific statutory provision for review of order terminating federal funds for child welfare service program under this chapter, in view of this section and section 2000d–2 of this title giving Court of Appeals exclusive jurisdiction of review of order terminating federal funds for the other four social security welfare programs because of alleged racial discrimination in administration of programs, consideration of the several programs and sensible judicial administration required construction of said sections to give Court of Appeals jurisdiction to review order terminating all five programs. Id.

2. Exclusive jurisdiction

In view of provision of this section for judicial review of agency action in the Court of Appeals and section 2000d–2 of this title stating that order terminating federal funds was reviewable in same manner as review of order for termination of funds under other sections of this chapter, Court of Appeals had sole and exclusive jurisdiction to review order of Secretary terminating federal welfare funds for State because of its failure to comply with regulations prohibiting discrimination in welfare programs financed by funds given under this chapter. Gardner v. State of Ala. for and in Behalf of Dept. of Pensions and Sec., C.A. Ala.1967, 385 F.2d 804, certiorari denied 88 S.Ct. 773, 389 U.S. 1046, 19 L.Ed.2d 839.

3. Parties

Action of State in joining four individuals as parties plaintiff in suit filed in district court challenging validity of order of Secretary terminating payment of approximately $100,000,000 in federal funds to state agency disbursing welfare did not defeat sole and exclusive jurisdiction of Court of Appeals granted by this section over actions brought by State to review order terminating federal funds to state agency. Gardner v. State of Ala. for and in Behalf of Dept. of Pensions and Sec., C.A.Ala.1967, 385 F.2d 804, certiorari denied 88 S.Ct. 773, 389 U.S. 1046, 19 L.Ed.2d 839.

§ 1317. Maintenance of state public assistance expenditures

(a) The total of the amounts determined under sections 303, 603, 1203, 1353, 1383, and 1396b of this title for any State for any quarter beginning after June 30, 1966, and ending before July 1, 1969, shall be reduced to the extent that—

(1) the excess of (A) the total of the amounts determined for the State under sections 303, 603, 1203, 1353, 1383, and 1396b of this title for such quarter over (B) the total of the amounts determined for the State under sections 303, 603, 1203, 1353 and 1383 of this title for the same quarter of the fiscal year ending June 30, 1965, is greater than

(2) the excess of (A) the total of the expenditures for such quarter (for which the determination is being made) under the plans of the State approved under subchapters I, X, XIV, XVI, and XIX of this chapter, and part A of subchapter IV of this chapter, over (B) the total of the expenditures under the State plans of the State approved under subchapters I, IV, X, XIV, and XVI of this chapter for the same quarter of the fiscal year ending June 30, 1965;

except that, at the option of the State, any of the following may be substituted (with respect to the quarters of any fiscal year) for the amount determined as provided in paragraph (1) (B)—

(3) the total of the amounts determined for the State under sections 303, 603, 1203, 1353, and 1383 of this title for the same quarter in the fiscal year ending June 30, 1964; or

(4) the average of the totals determined for the State under sections 303, 603, 1203, 1353, and 1383 of this title for each quarter in the fiscal year ending June 30, 1964, or June 30, 1965.

If the substitution of the total referred to in paragraph (3) of this section is chosen by the State, there shall be substituted for the amount determined under clause (B) of paragraph (2) of this section the total of the expenditures under the plans of the State approved under subchapters I, IV, X, XIV, and XVI of this chapter for the quarter referred to in such paragraph (3). If the substitution of the average for either of the years referred to in paragraph (4) of this section is chosen by the State, there shall be substituted for the amount determined under clause (B) of paragraph (2) of this section the average of the total expenditures under the plans of the State approved under subchapters I, IV, X, XIV, and XVI of this chapter for each quarter in the same fiscal year. For any fiscal year ending on or after June 30, 1967, and before July 1, 1968, in lieu of the substitution provided by paragraph (3) or (4), at the option of the State (i) paragraphs (1) and (2) of this subsection shall be applied on a fiscal year basis (rather than on a quarterly basis), and (ii) the base period fiscal year shall be either the fiscal year ending June

30, 1965, or the fiscal year ending June 30, 1964 (whichever is chosen by the State).

(b) For purposes of this section, expenditures under the plans of any State, approved under subchapters I, X, XIV, XVI, and XIX of this chapter, and part A of subchapter IV of this chapter, and the reduction determined with respect thereto under this section, shall be determined on the basis of data furnished by the State in the quarterly reports submitted by the State to the Secretary pursuant to and in accordance with the requirements of the Secretary under subchapters I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter; and determinations so made shall be conclusive for purposes of this section.

(c) If a reduction is required under the preceding provisions of this section in the total of the amounts determined for a State under sections 303, 603, 1203, 1353, 1383, and 1396b of this title for any quarter, the Secretary shall determine which of such amounts shall be reduced and the extent thereof in such manner as in his judgment will best carry out the purpose of maintaining State effort under the Federal-State public assistance programs of the State, and with the total of such reductions to be equal to the reduction required under subsections (a) and (b) of this section.

(d) (1) In the case of the quarters in any fiscal year ending before July 1, 1968, the reduction (if any) under this section shall, at the option of the State, be determined under paragraph (2), (3), or (4) of this subsection instead of under the preceding provisions of this section.

(2) If the reduction determination is made under this paragraph for a State, then—

(A) subsection (a) of this section shall be applied by taking into account only money payments under plans of the State approved under subchapters I, X, XIV, and XVI, and part A of subchapter IV of this chapter,

(B) subsection (b) of this section shall be applied by eliminating each reference to subchapter XIX of this chapter, and

(C) subsection (c) of this section shall be applied by eliminating the reference to section 1396b of this title, and by substituting a reference to this paragraph for the reference to subsections (a) and (b) of this section.

(3) If the reduction determination is made under this paragraph for a State, then—

(A) subsection (a) of this section shall be applied by taking into account payments under section 723 and section 622 of this title,

(B) subsection (b) of this section shall be applied by adding a reference to section 723 and section 622 of this title after each reference to subchapter XIX of this chapter, and

(C) subsection (c) of this section shall be applied by adding a reference to section 723 and section 622 of this title after the reference to section 1396b of this title, and by substituting a reference to this paragraph for the reference to subsections (a) and (b) of this section.

(4) If the reduction determination is made under this paragraph for a State, then—

(A) subsection (a) of this section shall be applied by taking into account only (i) money payments under plans of the State approved under subchapters I, X, XIV, and XVI, and part A of subchapter IV of this chapter, and (ii) payments under section 723 and section 622 of this title,

(B) subsection (b) of this section shall be applied by eliminating each reference to subchapter XIX of this chapter and substituting a reference to section 723 and section 622 of this title, and

(C) subsection (c) of this section shall be applied by eliminating the reference to section 1396b of this title and substituting a reference to section 723 and section 622 of this title, and by substituting

a reference to this paragraph for the reference to subsections (a) and (b) of this section.

Aug. 14, 1935, c. 531, Title XI, § 1117, as added July 30, 1965, Pub.L. 89–97, Title IV, § 405, 79 Stat. 420, and amended Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 221(a)–(c), 241(c) (6), 81 Stat. 899, 900, 917.

Repeal

Section 221(d) of Pub.L. 90–248, Title II, Jan. 2, 1968, 81 Stat. 900 provided that: "Effective July 1, 1968, section 1117 of the Social Security Act [this section] is repealed."

1968 Amendment. Subsec. (a). Pub.L. 90–248, § 221(a), (c), provided States the option, for any fiscal year ending on or after June 30, 1967, and before July 1, 1968, to have the maintenance of State effort requirements applied on a fiscal year basis rather than on a quarterly basis and if a State exercised this option required State to choose as the base period against which its effort is to be measured either the fiscal year ending June 30, 1965, or the fiscal year ending June 30, 1964, and made the effort requirements applicable to quarters beginning after June 30, 1966, rather than Dec. 31, 1965, respectively.

Subsec. (a) (2). Pub.L. 90–248, § 241(c) (6) (A), in clause (A) deleted "IV," following "I," and inserted ", and part A of subchapter IV of this chapter," after "XIX of this chapter".

Subsec. (b). Pub.L. 90–248, § 241(c) (6) (B)–(D), deleted "IV," in two instances, inserted ", and part A of subchapter IV of this chapter," after "and XIX of this chapter" and ", or part A of subchapter IV of this chapter" after "or XIX of this chapter", respectively.

Subsec. (d). Pub.L. 90–248, § 221(b), added subsec. (d).

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U. S. Code Cong. and Adm. News, p. 2834.

§ 1318. Alternative Federal payment with respect to public assistance expenditures

In the case of any State which has in effect a plan approved under subchapter XIX of this chapter for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with June 30), under paragraphs (1) and (2) of sections 303(a), 603(a), 1203(a), 1353(a), and 1383(a) of this title shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1396d of this title), instead of the percentages provided under each such section, to the expenditures under its State plans approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections.

Aug. 14, 1935, c. 531, Title XI, § 1118, as added July 30, 1965, Pub.L. 89–97, Title IV, § 411, 79 Stat. 423, and amended Jan. 2, 1968, Pub.L. 90–248, Title II, § 241(c) (7), 81 Stat. 917.

1968 Amendment. Pub.L. 90–248 deleted "IV," after "I," and inserted "and part A of subchapter IV of this chapter," after "XVI of this chapter,".

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm. News, p. 2834.

§ 1319. Federal participation in payments for repairs to home owned by recipient of aid or assistance

In the case of an expenditure for repairing the home owned by an individual who is receiving aid or assistance, other than medical assistance to the aged, under a State plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter if—

(1) the State agency or local agency administering the plan approved under such subchapter has made a finding (prior to making such expenditure) that (A) such home is so defective that continued occupancy is unwarranted, (B) unless repairs are made to such home, rental quarters will be necessary for such individual, and (C) the cost of rental quarters to take care of the needs of such individual

(including his spouse living with him in such home and any other individual whose needs were taken into account in determining the need of such individual) would exceed (over such time as the Secretary may specify) the cost of repairs needed to make such home habitable together with other costs attributable to continued occupancy of such home, and

(2) no such expenditures were made for repairing such home pursuant to any prior finding under this section,

the amount paid to any such State for any quarter under section 303(a), 603(a), 1203(a), 1353(a), or 1383(a) of this title shall be increased by 50 per centum of such expenditures, except that the excess above $500 expended with respect to any one home shall not be included in determining such expenditures.

Aug. 14, 1935, c. 531, Title XI, § 1119, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 209(a), 81 Stat. 894.

Effective Date. Section 209(b) of Pub. L. 90–248 provided that: "The amendment made by subsection (a) [enacting this section] shall apply with respect to expenditures made after December 31, 1967."

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U. S. Code Cong. and Adm. News, p. 2834.

§ 1320. Approval of certain projects

(a) No payment shall be made under this chapter with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this chapter (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Under Secretary of Health, Education, and Welfare.

(b) As soon as possible after the approval of any project under subsection (a) of this section, the Secretary shall submit to the Congress a description of such project including a statement of its purpose, probable cost, and expected duration.

Aug. 14, 1935, c. 531, Title XI, § 1120, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 249, 81 Stat. 919.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 1320a. Assistance in the form of institutional services in intermediate care facilities—Modification of certain plans to include such benefit

(a) Any State which has in effect a plan for old-age assistance, approved under subchapter I of this chapter, a plan for aid to the blind, approved under subchapter X of this chapter, a plan for aid to the permanently and totally disabled, approved under subchapter XIV of this chapter, or a plan for aid to the aged, blind, or disabled, approved under subchapter XVI of this chapter, may, on or after January 1, 1968, modify such plan to include therein benefits in the form of institutional services in intermediate care facilities for individuals who are entitled (or would, if not receiving institutional services in intermediate care facilities, be entitled) to assistance, under such plan, in the form of money payments.

Eligible individuals

(b) Any modification pursuant to subsection (a) of this section shall provide that benefits in the form of institutional services in intermediate care facilities will be provided only to individuals who—

(1) are entitled (or would, if not receiving institutional services in intermediate care facilities, be entitled) to receive aid or assistance, under the State plan, in the form of money payments;

(2) because of their physical or mental condition (or both), require living accommodations and care which, as a practical matter, can be made available to them only through institutional facilities; and

(3) do not have such an illness, disease, injury, or other condition as to require the degree of care and treatment which a hospital or skilled nursing home (as that term is employed in subchapter XIX of this chapter) is designed to provide.

Payments; Federal medical assistance percentage

(c) Payments to any State which modifies its approved State plan (referred to in subsection (a) of this section) to provide, to the recipients of aid or assistance thereunder, benefits in the form of institutional services in intermediate care facilities shall be made in the same manner and from the same appropriation as payments made with respect to expenditures under the State plan so modified, except that, with respect to expenditures made by the State in paying the cost of benefits in the form of institutional services in intermediate care facilities for any quarter, the Secretary shall, if the State so elects, pay to each State an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title).

Conditions, limitations, rights, and obligations applicable to modified plans

(d) Except when inconsistent with the purposes of this section or contrary to any provision of this section, any modification, pursuant to this section, of an approved State plan shall be subject to the same conditions, limitations, rights, and obligations as obtain with respect to such approved State plan.

"Intermediate care facility" defined

(e) For purposes of this section, the term "intermediate care facility" means an institution or distinct part thereof which (1) is licensed, under State law, to provide the patients or residents thereof, on a regular basis, the range or level of care and services which is suitable to the needs of individuals described in subsection (b) (2) and (3) of this section, but which does not provide the degree of care required to be provided by a skilled nursing home furnishing services under a State plan approved under subchapter XIX of this chapter, and (2) meets such standards of safety and sanitation as are applicable to nursing homes under State law; except that in no case shall such term include an institution which does not regularly provide a level of care and service beyond room and board. The term "intermediate care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to institutional services deemed appropriate by the State.

Aug. 14, 1935, c. 531, Title XI, § 1121, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 250(a), 81 Stat. 920.

Legislative History: For legislative history and purpose of Pub. L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

SUBCHAPTER XIV.—GRANTS TO STATES FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED

§ 1351. Appropriations

Index to Notes

1. Construction with other laws

McKinney's N. Y. Social Services Law, §§ 104, 104–a, 105, 360 providing for, inter alia, liens on real property interests of welfare recipients and on potential or actual recoveries for personal injuries, and for assignment of interests of insured recipients in life insurance policies, did not conflict with this section and sections 601 and 1201 relating to aid to families with dependent children and to assistance for the blind and disabled so as to be invalid under the supremacy clause. Snell v. Wyman, D.C.N.Y.1968, 281 F.Supp. 853.

§ 1352. State plans for aid to the permanently and totally disabled

(a) A State plan for aid to the permanently and totally disabled must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title, aid to families with dependent children under the State plan approved under section 602 of this title, or aid to the blind under the State plan approved under section 1202 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than $7.50 of any income, (B) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation; (9) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to the permanently and totally disabled; (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (12) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps

taken to assure, in the provisions of such services, maximum utilization of other agencies providing similar or related services.

As amended July 30, 1965, Pub.L. 89–97, Title IV, § 403(d), 79 Stat. 418; Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 210(a) (4), 213(a) (3), 81 Stat. 896, 898.

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1968 Amendment. Subsec. (a) (5). Pub. L. 90–248, § 210(a) (4), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a) (8) (A). Pub.L. 90–248, § 213(a) (3), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965 Amendment. Subsec. (a) (8). Pub. L. 89–97 inserted exception prohibiting disregard by state in making its determination of need of more than $5 of any income or of more than the first $20 of the first $80 per month of additional income which is earned and allowing disregard, for a period not in excess of 36 months, of such additional amounts of other income and resources as may be necessary to the fulfillment of approved plan for achieving self-support but only as to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation.

Effective Date of 1968 Amendment. Amendment of subsec. (a) (5) by section 210(a) (4) of Pub.L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub.L. 90–248, set out as a note under section 302 of this title.

Effective Date of 1965 Amendment. Section 403(d) of Pub.L. 89–97 provided in part that the amendment of subsec. (a) (8) of this section by said section was effective October 1, 1965.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub. L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1353. Payments to States; computation of amounts

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) $31\frac{1}{37}$ of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $37 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received aid to the permanently and totally disabled in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the permanently and totally disabled in the form of medical or any other type of remedial care); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $75 multiplied by the total number of such recipients of aid to the permanently and totally disabled for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month

as exceeds $37.50 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month; and

(3) in the case of any State whose State plan approved under section 1352 of this title meets the requirements of subsection (c) (1) of this section, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

* * * * * * * * * *

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

As amended Jan. 2, 1968, Pub.L. 90–248, Title II, § 212(c), 81 Stat. 897. As amended July 30, 1965, Pub.L. 89–97, Title I, § 122, Title IV, § 401(e), 79 Stat. 353, 415; Jan. 2, 1968, Pub.L. 90–248, Title II, § 212(c), 81 Stat. 897.

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1968 Amendment. Subsec. (a) (3) (D). Pub.L. 90–248 inserted ", except to the extent specified by the Secretary" following "shall" in the introductory text to subpar. (D).

1965 Amendment. Subsec. (a) (1). Pub. L. 89–97, §§ 122, 401(e), inserted "premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other" after "expenditures for" in parenthetical phrase appearing in so much of par. (1) as precedes clause (A); and substituted "31/37" and "$37" for "29/35" and "$35" in subpar. (A) and "$75" for "$70" in subpar. (B), respectively.

Subsec. (a) (2). Pub.L. 89–97, § 122, inserted "premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other" after "expenditures for" in parenthetical phrase.

Effective Date of 1968 Amendment. Amendment by Pub.L. 90–248 effective Jan. 1, 1968, see section 212(e) of Pub.L. 90–248, set out as a note under section 303 of this title.

Effective Date of 1965 Amendment. Amendment of subsec. (a) (1) of this section by section 401 of Pub.L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a state plan approved under subchapters I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub.L. 89–97, set out as a note under section 303 of this title.

Nonduplication of Payments to States; Prohibition of Payments after Dec. 31, 1969. Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub.L. 89–97, set out as a note under section 1396b of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub. L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1354. Operation of State plans

In the case of any State plan for aid to the permanently and totally disabled which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

* * * * * * * * * * *

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until he is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

As amended Jan. 2, 1968, Pub.L. 90–248, Title II, § 245, 81 Stat. 918.

1968 Amendment. Pub.L. 90–248 inserted "(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)" after "further payments will not be made to the State" and substituted in last sentence "further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)" for "further certification to the Secretary of the Treasury with respect to such State".

Legislative History: For legislative history and purpose of Pub. L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 1355. Definitions

For the purposes of this subchapter, the term "aid to the permanently and totally disabled" means money payments to, or (if provided in or

after the third month before the month in which the recipient makes application for aid) medical care in behalf of, or any type of remedial care recognized under State law in behalf of, needy individuals eighteen years of age or older who are permanently and totally disabled, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1352 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the permanently and totally disabled to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) of this subsection for any individual with respect to whom it is made.

As amended July 30, 1965, Pub.L. 89–97, Title II, § 221(c), Title IV, § 402(d), 79 Stat. 358, 417.

1965 Amendment. Pub.L. 89–97 deleted from the definition of "aid to the permanently and totally disabled" the exclusion of payments to or medical care in behalf of any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof; and extended the definition of "aid to the permanently and totally disabled" to include payments made on behalf of the needy individual to another individual who (as determined in accordance with standards determined by the Secretary) is interested in or concerned with the welfare of such needy individual and enumerated the five characteristics required of state plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs of the individual, special efforts to protect welfare, periodic review, and opportunity for fair hearing, respectively.

Effective Date of 1965 Amendment. Amendment of this section by section 221 of Pub.L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub.L. 89–97, set out as a note under section 303 of this title.

Amendment of section by section 402(d) of Pub.L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a state plan approved under subchapters I, X, XIV, or XVI of this chapter, see section 402(e) of Pub.L. 89–97, set out as a note under section 306 of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

SUBCHAPTER XV.—UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES

§§ 1361–1364. Repealed. Pub.L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 658, 660, 661

Section 1361, Act Aug. 14, 1953, c. 531, Title XV, § 1501, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1130, and amended Aug. 28, 1958, Pub.L. 85–848, § 2, 72 Stat. 1087; July 12, 1960, Pub.L. 86–624, § 30 (g), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86–778, Title V, §§ 531(e), 542(d), 74 Stat. 984, 986, defined terms used in this subchapter. See section 8501 of Title 5, Government Organization and Employees.

Section 1361, subsecs. (a) (6), (9), amended Jan. 2, 1968, Pub.L. 90–248, Title IV, § 403(f), 81 Stat. 932, to correct internal references, without reference to repeal of such section by Pub.L. 89–554.

Section 1362, Act Aug. 14, 1935, c. 531, Title XV, § 1502, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1131, and amended Sept. 13, 1960, Pub.L. 86–778, Title V, § 543(b) (1) (A), 74 Stat. 985, provided for compensation of Federal employees under state agreements. See section 8502 of Title 5, Government Organization and Employees.

Section 1363, Act Aug. 14, 1935, c. 531, Title XV, § 1503, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1132, and amended Sept. 13, 1960, Pub.L. 86–778, Title V, § 543(b) (1) (B), (C), (c) (1), 74 Stat. 986, provided for compensation of Federal employees in absence of state agreement. See section 8503 of Title 5, Government Organization and Employees.

Section 1364, Act Aug. 14, 1935, c. 531, Title XV, § 1504, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1133, and amended Sept. 13, 1960, Pub.L. 86–778, Title V, § 542(b) (2), 74 Stat. 986, related to assignment to State of Federal service and wages. See section 8504 of Title 5, Government Organization and Employees.

5. Findings of Federal agencies

Under agreement between Secretary of Labor of United States and New Hampshire division of employment security that in determining eligibility of federal employee to unemployment compensation benefits finding of federal agencies as to reasons for employee's termination of services shall be final and conclusive, finding that employee terminated work at United States installation because of chronic back condition not resulting from accident or work at installation constituted a "voluntary quit without good cause" and denial of benefits was proper. Constantopoulos v. New Hampshire Dept. of Employment Sec., 1966, 223 A.2d 418, 107 N.H. 400.

6. Review

Under agreement between Secretary of Labor of United States and New Hampshire division of employment security that latter will determine federal employees' entitlement to unemployment compensation and that such determination will be subject to review in same manner as determinations under state unemployment compensation law, United States naval installation was necessary and indispensable party to its employee's appeal to superior court and defense of sovereign immunity had been waived. Constantopoulos v. New Hampshire Dept. of Employment Sec., 1966, 223 A.2d 418, 107 N.H. 400.

§ 1365. Accrued annual leave

Repeals

Pub.L. 86–442, § 1, Apr. 22, 1960, 74 Stat. 31, which repealed this section effective only with respect to benefit years which begin more than thirty days after April 22, 1960, was repealed by Pub.L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 660.

§§ 1366–1371. Repealed. Pub.L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 658, 660, 661

Section 1366, Act Aug. 14, 1935, c. 531, Title XV, § 1506, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1133, provided for payments to states. See section 8505 of Title 5, Government Organization and Employees.

Section 1367, Act Aug. 14, 1935, c. 531, Title XV, § 1507, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1134, and amended Aug. 28, 1958, Pub.L. 85–848, § 4, 72 Stat. 1089; Sept. 13, 1960, Pub.L. 86–778, Title V, § 531(f), 74 Stat. 984, provided for dissemination of information by both Federal and State agencies. See section 8506 of Title 5, Government Organization and Employees.

Sections 1368–1370, Act Aug. 14, 1935, c. 531, Title XV, §§ 1508–1510, as added Sept. 1, 1954, c. 1212, § 4(a), 68 Stat. 1135, provided penalties, authorized the Secretary to make rules and regulations, and authorized appropriations. See sections 8507 and 8508 of Title 5, Government Organization and Employees.

Section 1371 Act Aug. 14, 1935, c. 531, Title XV, § 1511, as added Aug. 28, 1958, Pub.L. 85–848, § 3, 72 Stat. 1087, and amended Sept. 2, 1958, Pub.L. 85–857, § 13(i) (3), 72 Stat. 1265; Apr. 22, 1960, Pub. L. 86–442, § 2, 74 Stat. 82; Sept. 13, 1960, Pub.L. 86–778, Title V, § 542(c), 74 Stat. 986, provided an ex-servicemen's unemployment compensation program. See sections 8521–8525 of Title 5, Government Organization and Employees.

SUBCHAPTER XVI.—GRANTS TO STATES FOR AID TO THE AGED, BLIND, OR DISABLED, OR FOR SUCH AID AND MEDICAL ASSISTANCE FOR THE AGED

§ 1382. State plans for aid to aged, blind, or disabled or for such aid and medical assistance for aged—Contents

(a) A State plan for aid to the aged, blind, or disabled, or for aid to the aged, blind, or disabled and medical assistance for the aged, must—

* * * * * * * * * *

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

* * * * * * * * * *

(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under subchapter I of this chapter or aid under the State plan approved under part A of subchapter IV of this chapter or under subchapter X or XIV of this chapter;

* * * * * * * * * *

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual—

(A) if such individual is blind, the State agency (i) shall disregard the first $85 per month of earned income plus one-half of earned income in excess of $85 per month, and (ii) shall, for a period not in excess of 12 months, and may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan,

(B) if such individual is not blind but is permanently and totally disabled, (i) of the first $80 per month of earned income, the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (ii) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation,

(C) if such individual has attained age 65 and is neither blind nor permanently and totally disabled, of the first $80 per month of earned income the State agency may disregard

not more than the first $20 thereof plus one-half of the remainder, and

(D) the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than $7.50 of any income;

(15) if the State plan includes medical assistance for the aged—

* * * * * * * * * *

(D) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance for the aged paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, after the death of such individual and his surviving spouse, if any, from such individual's estate) of any medical assistance for the aged correctly paid on behalf of such individual under the plan;

(16) if the State plan includes aid or assistance to or in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution;

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 1383(a) (4) (A) (i) and (ii) of this title which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

(D) provide methods of determining the reasonable cost of institutional care for such patients; and

(17) if the State plan includes aid or assistance to or in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases.

As amended July 30, 1965, Pub.L. 89–97, Title II, § 221(d) (3), Title IV, § 403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 210 (a) (5), 213(a) (4), 241(d), 81 Stat. 896, 898, 917.

* * * * * * * * * *

Codification. Amendment by section 213(a) (4) of Pub. L. 90–248 to section 1604(a) (14) (D) of Act Aug. 14, 1935, has been executed to section 1602(a) (14) (D) of such Act, classified to subsec. (a) (14) (D) of this section to conform to appar-

ent congressional intent, rather than to section 1604 of such Act, classified to section 1384 of this title, as such section is without any subsec. (a) (14) (D) test.

1968 Amendment. Subsec. (a) (5). Pub. L. 90–248, § 210(a) (5), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a) (11). Pub.L. 90–248, § 241 (d), substituted "part A of subchapter IV of this chapter or under subchapter X or XIV of this chapter" for "subchapter IV, X, or XIV of this chapter".

Subsec. (a) (14) (D). Pub.L. 90–248, § 213(a) (4), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965 Amendment. Subsec. (a) (14). Pub.L. 89–97, § 403(e), denominated as subpar. (A) the provisions pertaining to blind individuals and denominated former clauses (A) and (B) of such provisions as clauses (i) and (ii) of subpar. (A) respectively and substituted subpars. (B), (C), and (D) for the remaining former provisions which allowed the state, in making its determination of need with respect to any other individual who had attained the age of 65 and was claiming aid to the aged, blind, or disabled, of the first $50 per month of earned income, to disregard, after December 31, 1962, not more than the first $10 thereof, plus one-half of the remainder.

Subsec. (a) (16), (17). Pub.L. 89–97, § 221(d) (3), added clauses (16) and (17).

Effective Date of 1968 Amendment. Amendment of subsec. (a) (5) by section 210(a) (5) of Pub.L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub.L. 90–248, set out as a note under section 302 of this title.

Effective Date of 1965 Amendment. Section 403(e) of Pub.L. 89–97 provided that the amendment of subsec. (a) (14) of this section by said section was effective October 1, 1965.

Amendment of this section by section 221 of Pub.L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub.L. 89–97, set out as a note under section 303 of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub. L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

Index to Notes

Employment and discharge of state personnel 1

1. Employment and discharge of state personnel

Employee who was discharged as head of county office of state department of welfare and whose discharge was found to be without cause by state review board had no cause of action against administrative head of state department and members of county board of public welfare under federal Constitution and federal statutory and regulatory requirements even though she had not been reinstated in her position. Norton v. Blaylock, D.C.Ark.1968, 285 F.Supp. 659.

Requirements of federal grants-in-aid programs that states set up and operate under personnel merit systems expresses Congressional policy in favor of security for state welfare employees who have attained permanent status. Id.

§ 1383. Payments to States; quarterly expenditures to exceed average of total expenditures for each quarter of fiscal year ending June 30, 1965

(a) From the sums appropriated therefor, the Secretary shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1962—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during each month of such quarter as aid to the aged, blind, or disabled under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) $31\frac{1}{37}$ of such expenditures, not counting so much of any expenditure with respect to such month as exceeds the product of $37 multiplied by the total number of recipients of such aid for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received such aid in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care); plus

(B) the larger of the following:

(i) (I) the Federal percentage (as defined in section 1301 (a) (8) of this title) of the amount by which such expenditures exceed the amount which may be counted under clause (A), not counting so much of such excess with respect to such month as exceeds the product of $38 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month, plus

(II) 15 per centum of the total expended during such month as aid to the aged, blind, or disabled under the State plan in the form of medical or any other type of remedial care, not counting so much of such expenditure with respect to such month as exceeds the product of $15 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month, or

(ii) (I) the Federal medical percentage (as defined in section 306(c) of this title) of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditures with respect to such month as exceeds (a) the product of $52 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month, or (b) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus the product of $37 multiplied by such total number of such recipients, plus (II) the Federal percentage of the amount by which the total expended during such month as aid to the aged, blind, or disabled under the State plan exceeds the amount which may be counted under clause (A) and the preceding provisions of this clause (B) (ii), not counting so much of such excess with respect to such month as exceeds the product of $38 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month;

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

(A) one-half of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus

* * * * * * * * *

(4) in the case of any State whose State plan approved under section 1382 of this title meets the requirements of subsection (c)(1) of this section, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

* * * * * * * * *

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

(d) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to individuals 65 years of age or older who are patients in institutions for mental diseases shall be paid only to the extent that the State makes a showing satisfactory to the Secretary that total expenditures in the State from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data,

satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection. As amended July 30, 1965, Pub.L. 89–97, Title I, § 122, Title II, § 221(d)(4), Title IV, § 401(b), 79 Stat. 353, 359, 414; Jan. 2, 1968, Pub.L. 90–248, Title II, § 212(d), 81 Stat. 898.

1968 Amendment. Subsec. (a) (4) (D). Pub.L. 90–248 inserted ", except to the extent specified by the Secretary" following "shall" in the introductory text to subpar. (D).

1965 Amendment. Subsec. (a) (1). Pub.L. 89–97, §§ 122, 401(b) inserted "premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other" after "expenditures for" in parenthetical phrase appearing in so much of par. (1) as precedes clause (A); and changed the first step of the formula for determining federal payments to states with approved plans for assistance to the aged, blind, or disabled under this subchapter, contained in clause (A), by providing federal sharing in 31/37ths of the first $37 of the average monthly assistance payment, instead of 29/35th of the first $35 of the average monthly assistance payment, extended the application of the federal percentage in the second step of the formula to an additional $38 of the state's average payment, restated the formula for the second and third steps by eliminating clause (C) and combining such steps in clause (B) and making provision therein to give recognition to the state's expenditures for care before applying the federal percentage to the remaining expenditures for which federal participation is available, respectively.

Subsec. (a) (2) (A). Pub.L. 89–97, § 122, inserted "premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other" after "expenditures for" in parenthetical phrase.

Subsec. (d). Pub.L. 89–97, § 221(d) (4), added subsec. (d).

Effective Date of 1968 Amendment. Amendment by Pub.L. 90–248 effective Jan. 1, 1968, see section 212(e) of Pub.L. 90–248, set out as a note under section 303 of this title.

Effective Date of 1965 Amendment. Amendment of this section by section 221 of Pub.L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub.L. 89–97, set out as a note under section 303 of this title.

Amendment of subsec. (a) (1) of this section by section 401 of Pub.L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a state plan approved under subchapters I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub.L. 89–97, set out as a note under section 303 of this title.

Nonduplication of Payments to States; Prohibition of Payments after Dec. 31, 1969. Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub.L. 89–97, set out as a note under section 1396b of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub. L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1385. Definitions

(a) For purposes of this title, the term "aid to the aged, blind, or disabled" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, are blind, or are 18 years of age or over and permanently and totally disabled, but such term does not include—

(1) any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(2) any such payments to or care in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1382 of this title includes provision for—

(A) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to

manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the aged, blind, or disabled to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(C) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(D) periodic review by such State agency of the determination under clause (A) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) of this subsection for any individual with respect to whom it is made.

(b) For purposes of this subchapter, the term "medical assistance for the aged" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals who are sixty-five years of age or older and who are not recipients of aid to the aged, blind, or disabled (except, for any month, for recipients of aid to the aged, blind, or disabled who are admitted to or discharged from a medical institution during such month) but whose income and resources are insufficient to meet all of such cost—

* * * * * * * * * *

except that such term does not include any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution). As amended July 30, 1965, Pub.L. 89–97, Title II, §§ 221(d) (1), (2), 222(b), Title IV, § 402 (b), 79 Stat. 358, 360, 416.

1965 Amendment. Subsec. (a). Pub.L. 89–97, § 221(d) (1), deleted from the definition of "aid to the aged, blind, or disabled" the exclusion of (1) payments to or medical care in behalf of any individual who is a patient in an institution for tuberculosis or mental diseases, or (2) payments to any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof, or (3) medical care in behalf of any individual, who is a patient in a medical institution as a result of a diagnosis that he has tuberculosis or psychosis, with respect to any period after the individual has been a paient in such an institution, as a result of such diagnosis, for forty-two days.

Pub.L. 89–97, § 402(b), extended the definition of "aid to the aged, blind, or disabled" to include payments made on behalf of the needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of the needy individual and enumerated the five characteristics required of state plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs of needy individual, special efforts to protect welfare, periodic review, and opportunity for fair hearing.

Subsec. (b). Pub.L. 89–97, §§ 221(d) (2), 222(b), deleted from the provision at end of clause (12) excluding certain payments from definition of "medical assistance for the aged" payments with respect to care or services for any individual who is a patient in an institution for tuberculosis or mental diseases or for any individual who is a patient in a medical institution as a result of a diagnosis of tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, for forty-two days and inserted in the text preceding clause (1) "(except, for any month, for recipients of aid to the aged, blind, or disabled who are admitted to or discharged from a medical institution during such month)" following "who are not recipients of aid to the aged, blind, or disabled", respectively.

Effective Date of 1965 Amendment. Amendment of this section by section 221 of Pub.L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub.L. 89–97, set out as a note under section 303 of this title.

Amendment of this section by section 222 of Pub.L. 89–97 applicable in the case of expenditures under a State plan approved under this subchapter with respect to care and services provided under

such plan after June 1965, see section 222 (c) of Pub.L. 89–97, set out as a note under section 306 of this title.

Amendment of subsec. (a) by section 402(b) of Pub.L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a state plan approved under subchapters I, X, XIV, or XVI of this chapter, see section 402(e) of Pub.L. 89–97, set out as a note under section 306 of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

SUBCHAPTER XVII.—GRANTS FOR PLANNING COMPREHENSIVE ACTION TO COMBAT MENTAL RETARDATION

§ 1391. Appropriations

For the purpose of assisting the States (including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) to plan for and take other steps leading to comprehensive State and community action to combat mental retardation, there is authorized to be appropriated the sum of $2,200,000. There are also authorized to be appropriated, for assisting such States in initiating the implementation and carrying out of planning and other steps to combat mental retardation, $2,750,000 for the fiscal year ending June 30, 1966, and $2,750,000 for the fiscal year ending June 30, 1967. As amended July 30, 1965, Pub.L. 89–97, Title II, § 211(a), 79 Stat. 356.

1965 Amendment. Pub.L. 89–97 authorized appropriations of $2,750,000 for fiscal years ending June 30, 1966 and 1967 for implementation of mental retardation planning.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1392. Availability of funds during certain fiscal years; limitation on amount; utilization of grant

The sums appropriated pursuant to the first sentence of section 1391 of this title shall be available for grants to States by the Secretary during the fiscal year ending June 30, 1964, and the succeeding fiscal year; and the sums appropriated pursuant to the second sentence of such section for the fiscal year ending June 30, 1966, shall be available for such grants during such year and the next two fiscal years, and sums appropriated pursuant thereto for the fiscal year ending June 30, 1967, shall be available for such grants during such year and the succeeding fiscal year. Any such grant to a State, which shall not exceed 75 per centum of the cost of the planning and related activities involved, may be used by it to determine what action is needed to combat mental retardation in the State and the resources available for this purpose, to develop public awareness of the mental retardation problem and of the need for combating it, to coordinate State and local activities relating to the various aspects of mental retardation and its prevention, treatment, or amelioration, and to plan other activities leading to comprehensive State and community action to combat mental retardation. As amended July 30, 1965, Pub.L. 89–97, Title II, § 211(b), 79 Stat. 356.

1965 Amendment. Pub.L. 89–97 inserted the provision making appropriations for fiscal year ending June 30, 1966 available for grants during such fiscal year and the next two fiscal years and the appropriation for fiscal year ending June 30, 1967 available for grants during such fiscal year and the succeeding fiscal year.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

SUBCHAPTER XVIII.—HEALTH INSURANCE FOR THE AGED [New]

§ 1395. Prohibition against any Federal interference

Nothing in this subchapter shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or

over the selection, tenure, or compensation of any officer or employee of any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person. Aug. 14, 1935, c. 531, Title XVIII, § 1801, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 291.

Short Title. Section 100 of Pub.L. 89–97 provided that: "This title [which enacted this subchapter, sections 426, 907, and 1396–1396d of this title, and section 228s—2 of Title 45, amended sections 303, 401, 401a, 402, 418, 603, 1203, 1301, 1306, 1309, 1315, 1353, 1383, and 1395kk of this title sections 72, 79, 213, 401, 405, 1401, 3101, 3111, 3201, 3211, 3221, and 6051 of Title 26 and sections 228e and 228s—2 of Title 45, and enacted provisions set out as notes under sections 426, 1301, 1309, 1315, 1395*l*, 1395o, 1395p, and 1396b of this title, sections 213 and 3201 of Title 26, and section 228s—2 of Title 45] may be cited as the 'Health Insurance for the Aged Act'."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395a. Free choice by patient guaranteed

Any individual entitled to insurance benefits under this subchapter may obtain health services from any institution, agency, or person qualified to participate under this subchapter if such institution, agency, or person undertakes to provide him such services. Aug. 14, 1935, c. 531, Title XVIII, § 1802, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 291.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395b. Option to individuals to obtain other health insurance protection

Nothing contained in this subchapter shall be construed to preclude any State from providing, or any individual from purchasing or otherwise securing protection against the cost of any health services. Aug. 14, 1935, c. 531, Title XVIII, § 1803, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 291.

Legislative History. For legislative history and purpose of Pub.L. 89–97 see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395b—1. Incentives for economy while maintaining or improving quality in the provision of health services—Payments or reimbursement of physicians, organizations, or institutions engaged in experiments; basis

(a) The Secretary of Health, Education, and Welfare is authorized to develop and engage in experiments under which physicians who would otherwise be entitled to receive payment on the basis of reasonable charge, and organizations and institutions which would otherwise be entitled to reimbursement or payment on the basis of reasonable cost, for services provided—

(1) under this subchapter,

(2) under a State plan approved under subchapter XIX of this chapter, or

(3) under a plan developed under subchapter V of this chapter,

and which are selected by the Secretary in accordance with regulations established by the Secretary, would be reimbursed or paid in any manner mutually agreed upon by the Secretary and the physician, organization, or institution. The method of payment (in the case of physicians) or reimbursement (in the case of an organization or institution) which may be applied in such experiments shall be such as the Secretary may select and may be based on charges or costs adjusted by incentive factors and may include specific incentive payments or reductions of payments for the performance of specific actions but in any case shall be such as he determines may, through experiment, be demonstrated to have the effect of increasing the efficiency and economy of health services through the creation of additional incentives to these ends without adversely affecting the quality of such services.

Waiver of certain payment or reimbursement requirements; advice and recommendations of specialists preceding experimentation

(b) In the case of any experiment under subsection (a) of this section the Secretary may waive compliance with the requirements of this subchapter and subchapters V and XIX of this chapter insofar as such re- and costs incurred in such experiment in excess of the costs which would quirements relate to reimbursement or payment on the basis of reasonable cost, or (in the case of physicians) on the basis of reasonable charge; otherwise be reimbursed or paid under such subchapters may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment shall be engaged in or developed under subsection (a) of this section until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct the proposed experiment, and its relationship to other similar experiments already completed or in process.

Pub.L. 90–248, Title IV, § 402(a), (b), Jan. 2, 1968, 81 Stat. 930.

Codification. Section is comprised of subsecs. (a) and (b) of section 402 of Pub. L. 90–248. Subsec. (c) of such section 402 amended section 1395*ll*(b) of this title.

Section was enacted as a part of the Social Security Amendments of 1967 and not as a part of the Social Security Act which comprises this chapter.

Legislative History: For legislative history and purpose of Pub. L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

PART A.—HOSPITAL INSURANCE BENEFITS FOR THE AGED

§ 1395c. Description of program

The insurance program for which entitlement is established by section 426 of this title provides basic protection against the costs of hospital and related post-hospital services in accordance with this part for individuals who are age 65 or over and are entitled to retirement benefits under subchapter II of this chapter or under the railroad retirement system. Aug. 14, 1935, c. 531, Title XVIII, § 1811, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 291.

Advisory Council to Study Coverage of the Disabled under Subchapter XVIII. Section 140 of Pub.L. 90–248, Title I, Jan. 2, 1968, 81 Stat. 854, provided that:

"(a) The Secretary of Health, Education, and Welfare shall appoint an Advisory Council to study the need for coverage of the disabled under the health insurance program of title XVIII of the Social Security Act [this subchapter].

"(b) The Council shall be appointed by the Secretary during 1968 without regard to the provisions of title 5, United States Code [Title 5, Government Organization and Employees], governing appointments in the competitive service and shall consist of 12 persons who shall, to the extent possible, represent organizations of employers and employees in equal numbers, and represent self-employed persons and the public.

"(c) The Council is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary shall, in addition, make available to such Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health, Education, and Welfare as it may require to carry out such functions.

"(d) Members of the Council, while serving on the business of the Council (inclusive of travel time), shall receive compensation at rates fixed by the Secretary, but not exceeding $100 per day and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code [section 5703 of Title 5, Government Organization and Employees], for persons in the Government employed intermittently.

"(e) The Council shall make findings on the unmet need of the disabled for health insurance, on the costs involved in providing the disabled with insurance protection to cover the cost of hospital and medical services, and on the ways of financing this insurance. The Council shall submit a report of its findings to the Secretary not later than January 1, 1969, together with recommendations on how such protection should be financed and, if such financing is to be accomplished through the trust funds established under title XVIII of the Social Security Act [this subchapter], on the extent to which each of such trust funds should bear the cost of such financing. Such report shall thereupon be transmitted to the Congress and to the Boards of Trustees created by sections 1817(b) and 1841 (b) of the Social Security Act [sections 1395i and 1395t of this title]. After the date of transmittal to the Congress of the report, the Council shall cease to exist."

Reimbursement of Charges under Part A for Services to Patients Admitted Prior to 1968 to Certain Hospitals. Section 142 of Pub.L. 90–248, Title I, Jan. 2, 1968, 81 Stat. 855, provided that:

"(a) Notwithstanding any provision of title XVIII of the Social Security Act [this subchapter], an individual who is entitled to hospital insurance benefits under section 226 of such Act [section 426 of

this title] may, subject to subsections (b) and (c), receive, on the basis of an itemized bill, reimbursement for charges to him for inpatient hospital services (as defined in section 1861 of such Act [section 1395x of this title], but without regard to subsection (e) of such section) furnished by, or under arrangements (as defined in section 1861(w) of such Act [section 1395x (w) of this title]) with, a hospital if—

"(1) the hospital did not have an agreement in effect under section 1866 of such Act [section 1395cc of this title] but would have been eligible for payment under part A of title XVIII of such Act [this part] with respect to such services if at the time such services were furnished the hospital had such an agreement in effect;

"(2) the hospital (A) meets the requirements of paragraphs (5) and (7) of section 1861(e) of such Act [section 1395x(e) of this title], (B) is not primarily engaged in providing the services described in section 1861(j) (1) (A) of such Act [section 1395x(j) (1) (A) of this title], and (C) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of section 1861(r) of such Act [section 1395x(r) of this title], to inpatients (i) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (ii) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

"(3) the hospital did not meet the requirements that must be met to permit payment to the hospital under part A of title XVIII of such Act [this part]; and

"(4) an application is filed (submitted in such form and manner and by such person, and containing and supported by such information, as the Secretary shall by regulations prescribe) for reimbursement before January 1, 1969.

"(b) Payments under this section may not be made for inpatient hospital services (as described in subsection (a)) furnished to an individual—

"(1) prior to July 1, 1966,

"(2) after December 31, 1967, unless furnished with respect to an admission to the hospital prior to January 1, 1968, and

"(3) for more than—

"(A) 90 days in any spell of illness, but only if (i) prior to January 1, 1969, the hospital furnishing such services entered into an agreement under section 1866 of the Social Security Act [section 1395cc of this title] and (ii) the hospital's plan for utilization review, as provided for in section 1861(k) of such Act [section 1395x (k) of this title], has, in accordance with section 1814 of such Act [section 1395f of this title], been applied to the services furnished such individual, or

"(B) 20 days in any spell of illness, if the hospital did not meet the conditions of clauses (i) and (ii) of subparagraph (A).

"(c) (1) The amounts payable in accordance with subsection (a) with respect to inpatient hospital services shall, subject to paragraph (2) of this subsection, be paid from the Federal Hospital Insurance Trust Fund in amounts equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semi-private accommodations (as defined in section 1861(v) (4) of the Social Security Act [section 1395x(v) (4) of this title]) whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semi-private accommodations (as so defined). For purposes of the preceding provisions of this paragraph, the term 'routine services' shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term 'ancillary services' shall mean those special services for which charges are customarily made in addition to routine services.

"(2) Before applying paragraph (1), payments made under this section shall be reduced to the extent provided for under section 1813 of the Social Security Act [section 1395e of this title] in the case of benefits payable to providers of services under part A of title XVIII of such Act [this part].

"(d) For the purposes of this section—

"(1) the 90-day period, referred to in subsection (b) (3) (A), shall be reduced by the number of days of inpatient hospital services furnished to such individual during the spell of illness, referred to therein, and with respect to which he was entitled to have payment made under part A of title XVIII of the Social Security Act [this part];

"(2) the 20-day period, referred to in subsection (b) (3) (B) shall be reduced by the number of days in excess of 70 days of inpatient hospital services furnished during the spell of illness, referred to therein, and with respect to which such individual was entitled to have payment made under such part A [this part];

"(3) the term 'spell of illness' shall have the meaning assigned to it by subsection (a) of section 1861 of such Act [section 1395x(a) of this title] except that the term 'inpatient hospital services' as it appears in such subsection shall have the meaning assigned to it by subsection (a) of this section."

Legislative History: For legislative history and purpose of Pub.L. 89-97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395d. Scope of benefits

(a) The benefits provided to an individual by the insurance program under this part shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1395f(d) (2) of this title to him (subject to the provisions of this part) for—

(1) inpatient hospital services for up to 150 days during any spell of illness minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made un-

der this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services for up to 100 days during any spell of illness; and

(3) post-hospital home health services for up to 100 visits (during the one-year period described in section 1395x(n) of this title) after the beginning of one spell of illness and before the beginning of the next.

(b) Payment under this part for services furnished an individual during a spell of illness may not (subject to subsection (c) of this section) be made for—

(1) inpatient hospital services furnished to him during such spell after such services have been furnished to him for 150 days during such spell minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services furnished to him during such spell after such services have been furnished to him for 100 days during such spell; or

(3) inpatient psychiatric hospital services furnished to him after such services have been furnished to him for a total of 190 days during his lifetime.

(c) If an individual is an inpatient of a psychiatric hospital on the first day of the first month for which he is entitled to benefits under this part, the days on which he was an inpatient of such a hospital in the 150-day period immediately before such first day shall be included in determining the number of days limit under subsection (b) (1) of this section insofar as such limit applies to (1) inpatient psychiatric hospital services or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness (but shall not be included in determining such number of days limit insofar as it applies to other inpatient hospital services or in determining the 190-day limit under subsection (b) (3) of this section).

(d) Payment under this part may be made for post-hospital home health services furnished an individual only during the one-year period described in section 1395x(n) of this title following his most recent hospital discharge which meets the requirements of such section, and only for the first 100 visits in such period. The number of visits to be charged for purposes of the limitation in the preceding sentence, in connection with items or services described in section 1395x(m) of this title, shall be determined in accordance with regulations.

(e) For purposes of subsections (b), (c), and (d) of this section, inpatient hospital services, inpatient psychiatric hospital services, post-hospital extended care services, and post-hospital home health services shall be taken into account only if payment is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1395f(a) of this title, made with respect to such services under this part.

(f) For definition of "spell of illness", and for definitions of other terms used in this part, see section 1395x of this title.

Aug. 14, 1935, c. 531, Title XVIII, § 1812, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 291, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, §§ 129(c) (2), 137(a), 138(a), 143(b), 81 Stat. 847, 853, 854, 857, 859.

1968 Amendment. Subsec. (a). Pub.L. 90–248, § 143(b), inserted "or, in the case of payments referred to in section 1395f (d) (2) of this title to him" after "on his behalf" in text preceding par. (1).

Subsec. (a) (1). Pub.L. 90–248, § 137 (a) (1), increased the maximum duration of benefits from 90 to 150 days minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies that he does not desire to have such payment made).

Subsec. (a) (4). Pub.L. 90–248, § 129(c) (2), deleted former par. (4) which provided for payment for outpatient hospital diagnostic services.

Subsec. (b) (1). Pub.L. 90–248, § 137 (a) (2), changed the limitation on payments from 90 to 150 days minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies that he does not desire to have such payment made).

Subsec. (c). Pub.L. 90–248, § 138(a), increased the limit from 90 to 150 days so that if an individual was an inpatient of a psychiatric or tuberculosis hospital on the first day of the first month for which he is entitled to benefits, the days he was an inpatient in the 150-day period immediately before such first day are included in determining the limit under subsec. (b) (1) insofar as such limit applies to (1) inpatient psychiatric hospital services and inpatient tuberculosis hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness or tuberculosis (but are not included in determining such limit as it applies to other inpatient hospital services or in determining the 190-day limit under subsec. (b) (3)).

Pub.L. 90–248, § 146(a), provided that the limitation of allowable days of inpatient hospital services will not apply to services provided to an inpatient of a tuberculosis hospital.

Effective Date of 1968 Amendment. Section 129(d) of Pub.L. 90–248 provided that: "The amendments made by this section [to subsec. (a) (4) of this section and sections 426(b) (1), 1395e(a) (2)–(4), (b) (1), (2), 1395f(a), (d), 1395k(a) (2) (B), 1395l(b), (d), 1395n(a)–(c), 1395x(e), (p), (s) (2), (y) (3), 1395cc(a) (2) of this title, and section 228s-2(a) of Title 45] shall apply with respect to services furnished after March 31, 1968, except that subsection (c) (5) of such section [amending section 1395f(a) of this title] shall become effective with respect to services furnished after the date of enactment of this Act [Jan. 2, 1968]."

Section 137(c) of Pub.L. 90–248 provided that: "The amendments made by subsections (a) and (b) [to subsecs. (a) (1) and (b) (1) of this section and section 1395e(a) (1) of this title] shall apply with respect to services furnished after December 31, 1967."

Section 138(b) of Pub.L. 90–248 provided that: "The amendments made by subsection (a) [to subsec. (c) of this section] shall apply with respect to payment for services furnished after December 31, 1967."

Section 143(d) of Pub.L. 90–248 provided that: "The provisions made by subsection (a) of this section [amending section 1395x(e) of this title] shall become effective as of July 1, 1966, and the provisions made by subsections (b) and (c) of this section [amending subsec. (a) of this section and section 1395f(d) of this title] shall apply to services furnished with respect to admissions occurring after December 31, 1967, and to outpatient hospital diagnostic services furnished after December 31, 1967, and before April 1, 1968."

Section 146(b) of Pub.L. 90–248 provided that: "The amendment made by subsection (a) [to subsec. (c) of this section] shall apply with respect to payment for services furnished after December 31, 1967."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 1395e. Deductibles and coinsurance—Inpatient hospital services; outpatient hospital diagnostic services; blood; post-hospital extended care services

(a) (1) The amount payable for inpatient hospital services furnished an individual during any spell of illness shall be reduced by a deduction equal to the inpatient hospital deductible or, if less, the charges imposed with respect to such individual for such services, except that, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed. Such amount shall be further reduced by a coinsurance amount equal to—

(A) one-fourth of the inpatient hospital deductible for each day (before the 91st day) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 60 days during such spell; and

(B) one-half of the inpatient hospital deductible for each day (before the day following the last day for which such individual is entitled under section 1395d(a) (1) of this title to have payment made on his behalf for inpatient hospital services during such spell of illness) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 90 days during such spell;

except that the reduction under this sentence for any day shall not exceed the charges imposed for that day with respect to such individual for such services (and for this purpose, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed).

(2) The amount payable to any provider of services under this part for services furnished an individual during any spell of illness shall be further reduced by a deduction equal to the cost of the first three pints

of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to him as part of such services during such spell of illness.

(3) The amount payable for post-hospital extended care services furnished an individual during any spell of illness shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which he is furnished such services after such services have been furnished to him for 20 days during such spell.

Inpatient hospital deductible

(b) (1) The inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section shall be $40 in the case of any spell of illness beginning before 1969.

(2) The Secretary shall, between July 1 and October 1 of 1968, and of each year thereafter, determine and promulgate the inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section in the case of any spell of illness beginning during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $40 multiplied by the ratio of (A) the current average per diem rate for inpatient hospital services for the calendar year preceding the promulgation, to (B) the current average per diem rate for such services for 1966. Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4). The current average per diem rate for any year shall be determined by the Secretary on the basis of the best information available to him (at the time the determination is made) as to the amounts paid under this part on account of inpatient hospital services furnished during such year, by hospitals which have agreements in effect under section 1395cc of this title, to individuals who are entitled to hospital insurance benefits under section 426 of this title, plus the amount which would have been so paid but for subsection (a) (1) of this section.

Aug. 14, 1935, c. 531, Title XVIII, § 1813, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 292, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, §§ 129(c) (3), (4), 135(a), 137(b), 81 Stat. 847, 848, 852, 854.

1968 Amendment. Subsec. (a) (1). Pub. L. 90–248, § 137(b), designated existing provisions as subpar. (A), added subpar. (B) and the exception provision that the reduction for any day shall not exceed the charges for that day.

Subsec. (a) (2). Pub.L. 90–248, § 135 (a) (1), made the three pint deductible applicable also to equivalent quantities of packed red blood cells, as defined by the Secretary under regulations.

Subsec. (a) (2)–(4). Pub.L. 90–248, § 129(c) (3), deleted former par. (2) which provided for the reduction of the amount payable for outpatient hospital diagnostic services furnished an individual during a diagnostic study, and redesignated former pars. (3) and (4) as (2) and (3), respectively.

Subsec. (b) (1), (2). Pub.L. 90–248, § 129(c) (4) (A), (B), eliminated diagnostic studies from the application of the inpatient hospital deductible.

Effective Date of 1968 Amendment. Amendment of subsecs. (a) (2)–(4), (b) (1), (2) of this section by section 129(c) (3), (4) (A), (B) of Pub.L. 90–248, applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub.L. 90–248 set out as a note under section 1395d of this title.

Section 135(d) of Pub.L. 90–248 provided that: "The amendments made by this section [to subsec. (a) (2) of this section and sections 1395(*l*) (b) and 1395cc(a) (2) of this title] shall apply with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967."

Amendment of subsec. (a) (1) of this section by section 137(b) of Pub.L. 90–248, applicable with respect to services furnished after December 31, 1967, see section 137(c) of Pub.L. 90–248 set out as a note under section 1395d of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 1395f. Conditions of and limitations on payment for services—Requirement of requests and certifications

(a) Except as provided in subsection (d) of this section, payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc of this title and only if—

(1) written request, signed by such individual except in cases in which the Secretary finds it impracticable for the individual to do so,

is filed for such payment in such form, in such manner, within such time, and by such person or persons as the Secretary may by regulation prescribe;

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifications shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

(A) in the case of inpatient psychiatric hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the psychiatric treatment of an individual; and (i) such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary or (ii) inpatient diagnostic study is or was medically required and such services are or were necessary for such purposes;

(B) in the case of inpatient tuberculosis hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and such treatment can or could reasonably be expected to (i) improve the condition for which such treatment is or was necessary or (ii) render the condition noncommunicable;

(C) in the case of post-hospital extended care services, such services are or were required to be given on an inpatient basis because the individual needs or needed skilled nursing care on a continuing basis for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (8) of section 1395x(e) of this title) prior to transfer to the extended care facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services; or

(D) in the case of post-hospital home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m) (7) of this title) and needed skilled nursing care on an intermittent basis, or physical or speech therapy, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (8) of section 1395x(e) of this title) or post-hospital extended care services; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician;

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services and inpatient tuberculosis hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required

in accordance with clause (A) shall be furnished no later than the 20th day of such period;

(4) in the case of inpatient psychiatric hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving (A) intensive treatment services, (B) admission and related services necessary for a diagnostic study, or (C) equivalent services;

(5) in the case of inpatient tuberculosis hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to (A) improve his condition or (B) render it noncommunicable;

(6) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations, there was not in effect, at the time of admission of such individual to the hospital or extended care facility, as the case may be, a decision under section 1395cc (d) of this title (based on a finding that utilization review of long-stay cases is not being made in such hospital or facility); and

(7) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1395x(k) (4) of this title) pursuant to the system of utilization review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or extended care facility, as the case may be, received notice of such finding.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes certification of the kind provided in subparagraph (A), (B), (C), or (D) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations.

Reasonable cost of services

(b) The amount paid to any provider of services with respect to services for which payment may be made under this part shall, subject to the provisions of section 1395e of this title, be the reasonable cost of such services, as determined under section 1395x(v) of this title.

No payments to Federal providers of services

(c) No payment may be made under this part (except under subsection (d) of this section) to any Federal provider of services, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services for any item or service which such provider is obligated by a law of, or a contract with, the United States to render at public expense.

Payments for emergency hospital services

(d)(1) Payments shall also be made to any hospital for inpatient hospital services furnished in a calendar year, by the hospital or under arrangements (as defined in section 1395x(w) of this title) with it, to an individual entitled to hospital insurance benefits under section 426 of this title even though such hospital does not have an agreement in effect under this subchapter if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had

such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has elected to claim payments for all such inpatient emergency services and for the emergency outpatient services referred to in section 1395n(b) of this title furnished during such year. Such payments shall be made only in the amounts provided under subsection (b) of this section and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1395cc(a) of this title.

(2) Payment may be made on the basis of an itemized bill to an individual entitled to hospital insurance benefits under section 426 of this title for services described in paragraph (1) which are emergency services if (A) payment cannot be made under paragraph (1) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement.

(3) The amounts payable under the preceding paragraph with respect to services described therein shall, subject to the provisions of section 1395e of this title, be equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semiprivate accommodations (as defined in section 1395x(v)(4) of this title), whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semiprivate accommodations. For purposes of the preceding provisions of this paragraph, the term "routine services" shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term "ancillary services" shall mean those special services for which charges are customarily made in addition to routine services.

Payment for inpatient hospital services prior to notification of noneligibility

(e) Notwithstanding that an individual is not entitled to have payment made under this part for inpatient hospital services furnished by any hospital, payment shall be made to such hospital (unless it elects not to receive such payment or, if payment has already been made by or on behalf of such individual, fails to refund such payment within the time specified by the Secretary) for such services which are furnished to the individual prior to notification to such hospital from the Secretary of his lack of entitlement, if such payments are precluded only by reason of section 1395d of this title and if such hospital complies with the requirements of and regulations under this subchapter with respect to such payments, has acted in good faith and without knowledge of such lack of entitlement, and has acted reasonably in assuming entitlement existed. Payment under the preceding sentence may not be made for services furnished an individual pursuant to any admission after the 6th elapsed day (not including as an elapsed day Saturday, Sunday, or a legal holiday) after the day on which such admission occurred.

Payment for certain emergency hospital services furnished outside the United States

(f) The authority contained in subsection (d) of this section shall be applicable to emergency inpatient hospital services furnished an individual by a hospital located outside the United States if—

(1) such individual was physically present in a place within the United States at the time the emergency which necessitated such inpatient hospital services occurred; and

(2) such hospital was closer to, or substantially more accessible from, such place than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

Aug. 14, 1935, c. 531, Title XVIII, § 1814, as added July 30, 1965, Pub. L. 89–97, Title I, § 102(a), 79 Stat. 294, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, §§ 126(a), 129(c) (5)–(6) (A), 143(c), 81 Stat. 846, 848, 857.

1968 Amendment. Subsec. (a). Pub.L. 90–248, §§ 126(a) (5), 129(c) (5) (B), omitted references to former subpars. (E) and (F) in last sentence.

Subsec. (a) (2) (A)–(E). Pub.L. 90–248, § 126(a) (1), (2), deleted former subpar. (A) which provided that there be a physician's certification of medical necessity for admissions to hospitals other than psychiatric or tuberculosis institutions, and redesignated former subpars. (B)–(E) as (A)–(D), respectively.

Subsec. (a) (2) (F). Pub.L. 90–248, § 129(c) (5) (A), deleted former subpar. (F) which provided that there be a physician's certification for services furnished to outpatients.

Subsec. (a) (3). Pub.L. 90–248, § 126(a) (3), (4), added a new subpar. (3). Former subpar. (3) redesignated (4).

Subsec. (a) (4)–(7). Pub.L. 90–248 § 126 (a) (3), redesignated former pars. (3)–(6) as (4)–(7), respectively.

Subsec. (d). Pub.L. 90–248, § 129(c) (6) (A), eliminated outpatient hospital diagnostic services from provisions requiring payment for emergency hospital services.

Subsec. (d) (1)–(3). Pub.L. 90–248, § 143 (c), designated existing provisions as par. (1), inserted "in a calendar year" after "furnished" in first sentence of par. (1), added subpar. (C) to par. (1), and added pars. (2) and (3).

Effective Date of 1968 Amendment. Section 126(c) of Pub.L. 90–248 provided that: "The amendments made by this section [to subsec. (a) of this section and section 1395n(a) (2) (B) of this title] shall apply with respect to services furnished after the date of the enactment of this Act [Jan. 2, 1968]."

Amendment of subsecs. (a), (d) of this section by section 129(c) (5) and (6) of Pub.L. 90–248, applicable with respect to services furnished after Jan. 2, 1968, see section 129(d) of Pub.L. 90–248 set out as a note under section 1395d of this title.

Amendment of subsec. (d) (1)–(3) of this section by section 143(c) of Pub.L. 90–248, applicable with respect to services furnished with respect to admissions occurring after December 31, 1967, and to outpatient hospital diagnostic services furnished after December 31, 1967, and before April 1, 1968, see section 143(d) of Pub.L. 90–248 set out as a note under section 1395d of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1993. See, also, Pub.L. 90–248, 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 1395g. Payment to providers of services

The Secretary shall periodically determine the amount which should be paid under this part to each provider of services with respect to the services furnished by it, and the provider of services shall be paid, at such time or times as the Secretary believes appropriate (but not less often than monthly) and prior to audit or settlement by the General Accounting Office, from the Federal Hospital Insurance Trust Fund, the amounts so determined, with necessary adjustments on account of previously made overpayments or underpayments; except that no such payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part for the period with respect to which the amounts are being paid or any prior period. Aug. 14, 1935, c. 531, Title XVIII, § 1815, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 297.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395h. Use of public agencies or private organizations to facilitate payment to providers of services

(a) If any group or association of providers of services wishes to have payments under this part to such providers made through a national, State, or other public or private agency or organization and nominates such agency or organization for this purpose, the Secretary is authorized to enter into an agreement with such agency or organization providing for the determination by such agency or organization (subject to such review by the Secretary as may be provided for by the agreement) of the amount of the payments required pursuant to this part to be made to such providers, and for the making of such payments by such agency or organization to such providers. Such agreement may also include provision

for the agency or organization to do all or any part of the following: (1) to provide consultative services to institutions or agencies to enable them to establish and maintain fiscal records necessary for purposes of this part and otherwise to qualify as hospitals, extended care facilities, or home health agencies, and (2) with respect to the providers of services which are to receive payments through it (A) to serve as a center for, and communicate to providers, any information or instructions furnished to it by the Secretary, and serve as a channel of communication from providers to the Secretary; (B) to make such audits of the records of providers as may be necessary to insure that proper payments are made under this part; and (C) to perform such other functions as are necessary to carry out this subsection.

(b) The Secretary shall not enter into an agreement with any agency or organization under this section unless (1) he finds (A) that to do so is consistent with the effective and efficient administration of this part, and (B) that such agency or organization is willing and able to assist the providers to which payments are made through it under this part in the application of safeguards against unnecessary utilization of services furnished by them to individuals entitled to hospital insurance benefits under section 426 of this title, and the agreement provides for such assistance, and (2) such agency or organization agrees to furnish to the Secretary such of the information acquired by it in carrying out its agreement under this section as the Secretary may find necessary in performing his functions under this part.

(c) An agreement with any agency or organization under this section may contain such terms and conditions as the Secretary finds necessary or appropriate, may provide for advances of funds to the agency or organization for the making of payments by it under subsection (a) of this section, and shall provide for payment of so much of the cost of administration of the agency or organization as is determined by the Secretary to be necessary and proper for carrying out the functions covered by the agreement.

(d) If the nomination of an agency or organization as provided in this section is made by a group or association of providers of services, it shall not be binding on members of the group or association which notify the Secretary of their election to that effect. Any provider may, upon such notice as may be specified in the agreement under this section with an agency or organization, withdraw its nomination to receive payments through such agency or organization. Any provider which has withdrawn its nomination, and any provider which has not made a nomination, may elect to receive payments from any agency or organization which has entered into an agreement with the Secretary under this section if the Secretary and such agency or organization agree to it.

(e) An agreement with the Secretary under this section may be terminated—

(1) by the agency or organization which entered into such agreement at such time and upon such notice to the Secretary, to the public, and to the providers as may be provided in regulations, or

(2) by the Secretary at such time and upon such notice to the agency or organization, to the providers which have nominated it for purposes of this section, and to the public, as may be provided in regulations, but only if he finds, after reasonable notice and opportunity for hearing to the agency or organization, that (A) the agency or organization has failed substantially to carry out the agreement, or (B) the continuation of some or all of the functions provided for in the agreement with the agency or organization is disadvantageous or is inconsistent with the efficient administration of this part.

(f) An agreement with an agency or organization under this section may require any of its officers or employees certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in

carrying out the agreement, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(g) (1) No individual designated pursuant to an agreement under this section as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such agency or organization shall be liable to the United States for any payments referred to in paragraph (1) or (2). Aug. 14, 1935, c. 531, Title XVIII, § 1816, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 297.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395i. Federal Hospital Insurance Trust Fund

(a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Hospital Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes imposed by sections 3101(b) and 3111(b) of Title 26 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Title 26 after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of Title 26 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Title 26, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of self-employment established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Commissioner of Social Security shall serve as the Secretary of the Board of Trustees.

The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) (1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of Title 26 with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Secretary of

the Treasury or his delegate pursuant to subtitle F of Title 26, and the Secretary of Health, Education, and Welfare shall furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.

(2) Repayments made under paragraph (1) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(g) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(h) The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g) (1) of this title.

Aug. 14, 1935, c. 531, Title XVIII, § 1817, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 299, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, § 169(a), 81 Stat. 875.

References in Text. The Second Liberty Bond Act, as amended, referred to in subsec. (c), is classified to sections 745, 752–754b, 757, 757b–758, 760, 764–766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

1968 Amendment. Subsec. (b) (2). Pub. L. 90–248 substituted "April" for "March".

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 1395i—1. Same; authorization of appropriations

There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1395i of this title) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under this part with respect to individuals who are qualified railroad retirement beneficiaries (as defined in section 426(c) of this title) and who are not, and upon filing application for monthly insurance benefits under section 402 of this title would not be, entitled to such benefits if service as an employee (as defined in the Railroad Retirement Act of 1937) after December 31, 1936, had been included in the term "employment" as defined in this chapter,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss of interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the individuals described in

paragraph (1) had not been entitled to benefits under this. Pub.L. 89–97, Title I, § 111(d), July 30, 1965, 79 Stat. 343.

References in Text. The Railroad Retirement Act of 1937, referred to in the text, is classified to sections 228a to 228c—1, 228e–228h, and 228i to 228s—2 of Title 45, Railroads.

Codification. Section was enacted as a part of the Social Security Amendments of 1965 and as a part of the Health Insurance for the Aged Act but not as a part of the Social Security Act which comprises this chapter.

Effective Date. Section applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub.L. 89–97, set out as a note under section 228s—2 of Title 45, Railroads.

Cross References. Definitions, Railroad Retirement Act of 1937, see section 228a of Title 45, Railroads.

Definitions relating to employment, see section 410 of this title.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

PART B.—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR THE AGED

§ 1395j. Establishment of supplementary medical insurance program for the aged

There is hereby established a voluntary insurance program to provide medical insurance benefits in accordance with the provisions of this part for individuals 65 years of age or over who elect to enroll under such program, to be financed from premium payments by enrollees together with contributions from funds appropriated by the Federal Government. Aug. 14, 1935, c. 531, Title XVIII, § 1831, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 301.

Study to Determine Feasibility of Inclusion of Certain Additional Services under Part B. Section 141 of Pub.L. 90–248, Title I, Jan. 2, 1968, 81 Stat. 855, provided that: "The Secretary shall make a study relating to the inclusion under the supplementary medical insurance program (part B of title XVIII of the Social Security Act [this part]) of services of additional types of licensed practitioners performing health services in independent practice. The Secretary shall make a report to the Congress prior to January 1, 1969, of his finding with respect to the need for covering, under the supplementary medical insurance program, any of the various types of services such practitioners perform and the costs to such program of covering such additional services, and shall make recommendations as to the priority and method for covering these services and the measures that should be adopted to protect the health and safety of the individuals to whom such services would be furnished."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395k. Scope of benefits; definitions

(a) The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in paragraph (2) (B); and

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services for up to 100 visits during a calendar year;

(B) medical and other health services (other than physicians' services unless furnished by a resident or intern of a hospital and the services for which payment may be made pursuant to section 1395n(b)(2) of this title) furnished by a provider of services or by others under arrangements with them made by a provider of services; and

(C) outpatient physical therapy services.

(b) For definitions of "spell of illness", "medical and other health services", and other terms used in this part, see section 1395x of this title.

Aug. 14, 1935, c. 531, Title XVIII, § 1832, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 302, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, §§ 129(c) (6) (B), 133(d), 81 Stat. 848, 851.

1968 Amendment. Subsec. (a) (2) (B). Pub.L. 90–248, § 129(c) (6) (B), inserted "and the services for which payment may be made pursuant to section 1395n(b) (2) of this title" after "hospital".

Subsec. (a) (2) (C). Pub.L. 90–248, § 133(d), added subpar. (C).

Effective Date of 1968 Amendment. Amendment of subsec. (a) (2) (B) of this section by section 129(c) (6) (B) of Pub. L. 90–248, applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub.L. 90–248 set out as a note under section 1395d of this title.

Section 133(g) of Pub.L. 90–248 provided that: "The amendments made by the preceding subsections of this section [to subsec. (a) (2) of this section and sections 1395n(a) (2), 1395x(p), (s) (2) (D), 1395aa(a) and 1395cc(e) of this title] shall apply to services furnished after June 30, 1968."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1395*l*. Payment of benefits—Amounts

(a) Subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1395k(a) (1) of this title—80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b) of this section, and (B) with respect to expenses incurred for radiological or pathological services for which payment may be made under this part, furnished to an inpatient of a hospital by a physician in the field of radiology or pathology, the amounts paid shall be equal to 100 percent of the reasonable charges for such services; and

(2) in the case of services described in section 1395k(a) (2) of this title—80 percent of the reasonable cost of the services (as determined under section 1395x(v) of this title).

Deductible provision

(b) Before applying subsection (a) of this section with respect to expenses incurred by an individual during any calendar year, the total amount of the expenses incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which benefits payable under subsection (a) of this section are determinable) shall be reduced by a deductible of $50; except that (1) the amount of the deductible for such calendar year as so determined shall first be reduced by the amount of any expenses incurred by such individual in the last three months of the preceding calendar year and applied toward such individual's deductible under this section for such preceding year, and (2) such total amount shall not include expenses incurred for radiological or pathological services furnished to such individual as an inpatient of a hospital by a physician in the field of radiology or pathology. The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood

cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.

Mental disorders

(c) Notwithstanding any other provision of this part, with respect to expenses incurred in any calendar year in connection with the treatment of mental, psychoneurotic, and personality disorders of an individual who is not an inpatient of a hospital at the time such expenses are incurred, there shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section only whichever of the following amounts is the smaller:

(1) $312.50, or

(2) 62½ percent of such expenses.

Nonduplication of payments

(d) No payment may be made under this part with respect to any services furnished an individual to the extent that such individual is entitled (or would be entitled except for section 1395e of this title) to have payment made with respect to such services under part A.

Information for determination of amounts due

(e) No payment shall be made to any provider of services or other person under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to which the amounts are being paid or for any prior period.

Payment for purchase of durable medical equipment

(f) In the case of the purchase of durable medical equipment included under section 1395x(s)(6) of this title, by or on behalf of an individual, payment shall be made in such amounts as the Secretary determines to be equivalent to payments that would have been made under this part had such equipment been rented and over such period of time as the Secretary finds such equipment would be used for such individual's medical treatment, except that with respect to purchases of inexpensive equipment (as determined by the Secretary) payment may be made in a lump sum if the Secretary finds that such method of payment is less costly or more practical than periodic payments.

Aug. 14, 1935, c. 531, Title XVIII, § 1833 as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 302, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, §§ 129(c) (7), (8), 131(a), (b), 132(b), 135(c), 81 Stat. 848–850, 853.

1968 Amendment. Subsec. (a) (1). Pub. L. 90–248, § 131(a) (1), (2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b). Pub.L. 90–248, §§ 129(c) (7), 131(b), deleted reference in clause (1) to expenses regarded under former clause (2) as incurred for services furnished in last three months of preceding year, deleted former clause (2) which provided that the amount of any deduction imposed by section 1395e(a) (2) (A) of this title for outpatient hospital diagnostic services furnished in any calendar year is to be regarded as an incurred expense for such year; and added clause (2).

Pub.L. 90–248, § 135(c), added last sentence providing that there shall be a deductible equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells as defined under regulations) furnished to an individual during a calendar year which deductible is to be appropriately reduced to the extent that such blood has been replaced, and such blood will be deemed to have been replaced when the institution or person furnishing such blood is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells) furnished the individual to which the three pint deductible applies.

Subsec. (d). Pub.L. 90–248, § 129(c) (8), deleted reference to subsection (a) (2) (A) of section 1395e of this title.

Subsec. (f). Pub.L. 90–248, § 132(b), added subsec. (f).

Effective Date of 1968 Amendment. Amendment of subsecs. (b) and (d) of this section by section 129(c) (7), (8) of Pub.L. 90–248, applicable with respect to

services furnished after March 31, 1968, see section 129(d) of Pub.L. 90–248 set out as a note under section 1395d of this title.

Section 131(c) of Pub.L. 90–248 provided that: "The amendments made by this section [to subsecs. (a) (1) and (b) of this section] shall apply with respect to services furnished after March 31, 1968."

Section 132(c) of Pub.L. 90–248 provided that: "The amendments made by this section [enacting subsec. (f) of this section and amending section 1395x(s) (6) of this title] shall apply only with respect to items purchased after December 31, 1967."

Amendment of subsec. (b) of this section by section 135(c) of Pub.L. 90–248, applicable with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967, see section 135(d) of Pub.L. 90–248 set out as a note under section 1395e of this title.

Prohibition against Payments in Cases of Nonentitlement to Monthly Benefits under Subchapter II or Suspension of Benefits of Aliens Outside the United States. Section 104(b) (1) of Pub.L. 89–97 provided that: "No payments shall be made under part B of title XVIII of the Social Security Act [this part] with respect to expenses incurred by an individual during any month for which such individual may not be paid monthly benefits under title II of such Act [subchapter II of this chapter] (or for which such monthly benefits would be suspended if he were otherwise entitled thereto) by reason of section 202(t) of such Act [section 402(t) of this title] (relating to suspension of benefits of aliens who are outside the United States)."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1395m. Limitation on home health services

(a) Payment under this part may be made for home health services furnished an individual during any calendar year only for 100 visits during such year. The number of visits to be charged for purposes of the limitation in the preceding sentence, in connection with items and services described in section 1395x(m) of this title, shall be determined in accordance with regulations.

(b) For purposes of subsection (a) of this section, home health services shall be taken into account only if payment under this part is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1395n(a) of this title, made with respect to such services. Aug. 14, 1935, c. 531, Title XVIII, § 1834, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 303.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395n. Procedure for payment of claims of providers of services

(a) Except as provided in subsections (b) and (c) of this section, payment for services described in section 1395k(a) (2) of this title furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc(a) of this title, and only if—

(1) written request, signed by such individual except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, within such time, and by such person or persons as the Secretary may by regulations prescribe; and

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that—

(A) in the case of home health services (i) such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m) (7) of this title) and needed skilled nursing care on an intermittent basis, or physical or speech therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(B) in the case of medical and other health services, except services described in subparagraphs (B), (C), and (D) of section 1395x(s)(2) of this title, such services are or were medically required; and

(C) in the case of outpatient physical therapy services, (i) such services are or were required because the individual needed physical therapy services on an outpatient basis, (ii) a plan for furnishing such services has been established, and is periodically reviewed, by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title, or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title, but only with respect to the furnishing of outpatient physical therapy services (as therein defined).

(b) (1) Payment may also be made to any hospital for services described in section 1395x(s) of this title furnished as an outpatient service by a hospital or by others under arrangements made by it to an individual entitled to benefits under this part even though such hospital does not have an agreement in effect under this subchapter if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has made an election pursuant to section 1395f(d)(1)(C) of this title with respect to the calendar year in which such emergency services are provided. Such payments shall be made only in the amounts provided under section 1395*l*(a)(2) of this title and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1395cc (a) of this title.

(2) Payment may also be made on the basis of an itemized bill to an individual for services described in paragraph (1) of this subsection if (A) payment cannot be made under such paragraph (1) solely because the hospital does not elect, in accordance with section 1395f(d) (1) (C) of this title, to claim such payments and (B) such individual files application (submitted within such time and in such form and manner, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amounts payable under this paragraph shall, subject to the provisions of section 1395*l* of this title, be equal to 80 percent of the hospital's reasonable charges for such services.

(c) Notwithstanding the provisions of this section and sections 1395k, 1395*l*, and 1395cc(a) (1) (A) of this title, a hospital may, subject to such limitations as may be prescribed by regulations, collect from an individual the customary charges for services specified in section 1395x(s) of this title and furnished to him by such hospital as an outpatient, but only if such charges for such services do not exceed $50, and such customary charges shall be regarded as expenses incurred by such individual with respect to which benefits are payable in accordance with section 1395*l*(a) (1) of this title. Payments under this subchapter to hospitals which have elected to make collections from individuals in accordance with the preceding sentence shall be adjusted periodically to place the hospital in the same position it would have been had it instead been reimbursed in accordance with section 1395*l*(a) (2) of this title.

(d) No payment may be made under this part to any Federal provider of services or other Federal agency, except a provider of services which the Secretary determines is providing services to the public generally as

a community institution or agency; and no such payment may be made to any provider of services or other person for any item or service which such provider or person is obligated by a law of, or a contract with, the United States to render at public expense.

Aug. 14, 1935, c. 531, Title XVIII, § 1835, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 303, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, §§ 126(b), 129(c) (9) (A) (B), 130(a), (b), 133(e), 81 Stat. 846, 849, 851.

1968 Amendment. Subsec. (a). Pub.L. 90–248, §§ 129(c) (9) (A), 130(a), inserted introductory exception phrase and included reference therein to subsec. (c), respectively.

Subsec. (a) (2). Pub.L. 90–248, § 133(e) (5), added last sentence defining the term "provider of services".

Subsec. (a) (2) (B). Pub.L. 90–248, §§ 126(b), 133(e) (4), inserted "except services described in subparagraphs (B) and (C) of section 1395x(s) (2) of this title," after "health services,", and added reference to subpar. (D).

Subsec. (a) (2) (C). Pub.L. 90–248, § 133(e) (1)–(3), added subpar. (C).

Subsec. (b). Pub.L. 90–248, § 129(c) (9) (B), added subsec. (b). Former subsec. (b) redesignated (c), in turn redesignated (d).

Subsec. (c). Pub.L. 90–248, § 130(b), added subsec. (c). Former subsec. (c), previously designated (b), redesignated (d).

Subsec. (d). Pub.L. 90–248, §§ 129(c) (9) (B), 130(b), redesignated former subsec. (b) as (c), in turn as (d), respectively.

Effective Date of 1968 Amendment. Amendment of subsec. (a) (2) (B) by section 126(b) of Pub.L. 90–248, applicable with respect to services furnished after Jan. 2, 1968, see section 126(c) of Pub.L. 90–248 set out as a note under section 1395f of this title.

Amendment of subsecs. (a)–(c) of this section by section 129(c) (9) (A), (B) of Pub.L. 90–248, applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub.L. 90–248 set out as a note under section 1395d of this title.

Section 130(c) of Pub.L. 90–248 provided that: "The amendments made by this section [enacting subsec. (c) of this section] shall apply with respect to services furnished after March 31, 1968."

Amendment of subsec. (a) of this section by section 133(e) of Pub.L. 90–248, applicable with respect to services furnished after June 30, 1968, see section 133 (g) of Pub.L. 90–248 set out as a note under section 1395k of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1395o. Eligible individuals

Every individual who—

(1) has attained the age of 65, and

(2) (A) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this part, or (B) is entitled to hospital insurance benefits under part A,

is eligible to enroll in the insurance program established by this part.

Aug. 14, 1935, c. 531, Title XVIII, § 1836, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 304.

Persons Convicted of Subversive Activities. Section 104(b) (2) of Pub.L. 89–97 provided that: "An individual who has been convicted of any offense under (A) chapter 37 [section 791 et seq. of Title 18] (relating to espionage and censorship), chapter 105 [section 2151 et seq. of Title 18] (relating to sabotage), or chapter 115 [section 2381 et seq. of Title 18] (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, or (B) section 4, 112, or 113 of the Internal Security Act of 1950, as amended [section 783, 822, or 823 of Title 50], may not enroll under part B of title XVIII of the Social Security Act [this part]."

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395p. Enrollment periods—Generally; regulations

(a) An individual may enroll in the insurance program established by this part only in such manner and form as may be prescribed by regulations, and only during an enrollment period prescribed in or under this section.

Limitations

(b) (1) No individual may enroll for the first time under this part unless he does so in a general enrollment period (as provided in subsection (e) of this section) which begins within 3 years after the close of the first enrollment period during which he could have enrolled under this part.

(2) An individual whose enrollment under this part has terminated may not enroll for the second time under this part unless he does so in a general enrollment period (as provided in subsection (e) of this section) which begins within 3 years after the effective date of such termination. No individual may enroll under this part more than twice.

Initial general enrollment period; eligible individuals before March 1, 1966

(c) In the case of individuals who first satisfy paragraphs (1) and (2) of section 1395*o* of this title before March 1, 1966, the initial general enrollment period shall begin on the first day of the second month which begins after July 30, 1965 and shall end on May 31, 1966. For purposes of this subsection and subsection (d) of this section, an individual who satisfies paragraph (2) of section 1395*o* of this title solely by reason of subparagraph (B) thereof shall be treated as satisfying such paragraph (2) on the first day on which he is (or on filing application would be) entitled to hospital insurance benefits under part A.

Same; eligible individuals on or after March 1, 1966

(d) In the case of an individual who first satisfies paragraphs (1) and (2) of section 1395*o* of this title on or after March 1, 1966, his initial enrollment period shall begin on the first day of the third month before the month in which he first satisfies such paragraphs and shall end seven months later. Where the Secretary finds that an individual who has attained age 65 failed to enroll under this part during his initial enrollment period (based on a determination by the Secretary of the month in which such individual attained age 65), because such individual (relying on documentary evidence) was mistaken as to his correct date of birth, the Secretary shall establish for such individual an initial enrollment period based on his attaining age 65 at the time shown in such documentary evidence (with a coverage period determined under section 1395q of this title as though he had attained such age at that time).

General enrollment period

(e) There shall be a general enrollment period, after the period described in subsection (c) of this section, during the period beginning on January 1 and ending on March 31 of each year beginning with 1969.

Aug. 14, 1935, c. 531, Title XVIII, § 1837, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 304, and amended Apr. 8, 1966, Pub.L. 89–384, § 3(a), (b), 80 Stat. 105; Jan. 2, 1968, Pub.L. 90–248, Title I, §§ 136(a), 145(a), (b), 81 Stat. 853, 859.

1968 Amendment. Subsec. (b) (1). Pub. L. 90–248, § 145(a), permitted an individual enrolling in the supplementary medical insurance program for the first time to enroll at any time in a general enrollment period which begins within 3 years of the close of his initial enrollment period.

Subsec. (d). Pub.L. 90–248, § 136(a), added last sentence providing that if an individual who has attained age 65 failed to enroll in the program because, relying on erroneous documentary evidence, he was mistaken about his age, he may enroll using the date of attainment of age 65 that he alleges under the documentary evidence.

Subsec. (e). Pub.L. 90–248, § 145(b), provided for an annual general enrollment period for the supplementary medical insurance program beginning Jan. 1 and ending March 31 of each year, commencing in 1969.

1966 Amendment. Subsec. (c). Pub. L. 89–384, § 3(a), delayed the eligibility date from January 1, 1966, to March 1, 1966, and the closing date for the enrollment period from March 31, 1966, to May 31, 1966.

Subsec. (d). Pub.L. 89–384, § 3(b), substituted March 1, 1966, for January 1, 1966.

Effective Date of 1968 Amendment. Section 136(b) of Pub.L. 90–248 provided that: "The amendment made by subsection (a) [to subsec. (d) of this section] shall apply to individuals enrolling under part B of title XVIII [part B of this subchapter] in months beginning after the date of the enactment of this Act [Jan. 2, 1968]."

Section 145(c) of Pub.L. 90–248 provided that: "The amendments made by subsections (a), (b), and (c) [amending subsecs. (b) (1) and (e) of this section and section 1395q(b) of this title] shall become effective April 1, 1968. Notwithstanding the provisions of section 2 of Public Law 90–97, the amendments made by subsection (d) [to section 1395r(b) of this title] shall become effective December 1, 1968."

Enrollment Before Oct. 1, 1966 of Eligible Individuals Failing for Good Cause to Enroll Before June 1, 1966; Commencement of Coverage Period. Section 102(b) of Pub.L. 89–97, as amended by section 3(c) of Pub.L. 89–384, provided that: "If—

"(1) an individual was eligible to enroll under section 1837(c) of the Social Security Act [subsec. (c) of this sec-

tion] before June 1, 1966, but failed to enroll before such date, and

"(2) it is shown to the satisfaction of the Secretary of Health, Education, and Welfare that there was good cause for such failure to enroll before June 1, 1966, such individual may enroll pursuant to this subsection at any time before October 1, 1966. The determination of what constitutes good cause for purposes of the preceding sentence shall be made in accordance with regulations of the Secretary. In the case of any individual who enrolls pursuant to this subsection, the coverage period (within the meaning of section 1838 of the Social Security Act [section 1395q of this title]) shall begin on the first day of the 6th month after the month in which he so enrolls."

Extension Through March 31, 1968 of 1967 General Enrollment Period. Pub.L. 90-97, § 1, Sept. 30, 1967, 81 Stat. 249, provided: "That the general enrollment period under section 1837(e) of the Social Security Act [subsec. (e) of this section] beginning October 1, 1967, and ending December 31, 1967, shall, for purposes of enrolling in the insurance program established under part B of title XVIII of such Act [this part] and of terminating such enrollment as provided in section 1838(b) (1) of such Act [section 1395q(b) (1) of this title], be extended through March 31, 1968."

Legislative History: For legislative history and purpose of Pub.L. 89-97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 89-384, 1966 U.S. Code Cong. and Adm.News, p. 2101; Pub. L. 90-248, 1967 U.S.Code Cong. and Adm. News, p. 2834.

§ 1395q. Coverage period

(a) The period during which an individual is entitled to benefits under the insurance program established by this part (hereinafter referred to as his "coverage period") shall begin on whichever of the following is the latest:

(1) July 1, 1966; or

(2) (A) in the case of an individual who enrolls pursuant to subsection (d) of section 1395p of this title before the month in which he first satisfies paragraphs (1) and (2) of section 1395o of this title, the first day of such month, or

(B) in the case of an individual who enrolls pursuant to such subsection (d) in the month in which he first satisfies such paragraphs, the first day of the month following the month in which he so enrolls, or

(C) in the case of an individual who enrolls pursuant to such subsection (d) in the month following the month in which he first satisfies such paragraphs, the first day of the second month following the month in which he so enrolls, or

(D) in the case of an individual who enrolls pursuant to such subsection (d) more than one month following the month in which he satisfies such paragraphs, the first day of the third month following the month in which he so enrolls, or

(E) in the case of an individual who enrolls pursuant to subsection (e) of section 1395p of this title, the July 1 following the month in which he so enrolls.

(b) An individual's coverage period shall continue until his enrollment has been terminated—

(1) by the filing of notice that the individual no longer wishes to participate in the insurance program established by this part, or

(2) for nonpayment of premiums.

The termination of a coverage period under paragraph (1) shall take effect at the close of the calendar quarter following the calendar quarter in which the notice is filed. The termination of a coverage period under paragraph (2) shall take effect on a date determined under regulations, which may be determined so as to provide a grace period (not in excess of 90 days) in which overdue premiums may be paid and coverage continued.

(c) No payments may be made under this part with respect to the expenses of an individual unless such expenses were incurred by such individual during a period which, with respect to him, is a coverage period. Aug. 14, 1935, c. 531, Title XVIII, § 1838, as added July 30, 1965, Pub.L. 89-97, Title I, § 102(a), 79 Stat. 305, and amended Jan. 2, 1968, Pub.L. 90-248, Title I, § 145(c), 81 Stat. 859.

1968 Amendment. Subsec. (b). Pub.L. 90-248, § 145(c), deleted ", during a general enrollment period described in section 1395p(e) of this title," following "notice" in par. (1), and substituted in first sentence following par. (2) "the calendar quarter following the calendar quarter" for "December 31 of the year".

Effective Date of 1968 Amendment. Amendment by Pub.L. 90-248, effective

April 1, 1968, see section 145(e) of Pub.L. 90–248, set out as a note under section 1395p of this title.

Coverage Period; Termination Dates. Pub.L. 90–97, § 3(a), Sept. 30, 1967, 81 Stat. 249, provided that:

"(a) In the case of any individual who, pursuant to section 1838(b) (1) of the Social Security Act [subsec. (b) (1) of this section], terminates his enrollment in the insurance program established under part B of title XVIII of such Act [this part], his coverage period (as defined in section 1838(a) of such Act) [subsec. (a) of this section]—

"(1) shall terminate at the close of December 31, 1967, if he filed his notice of termination before January 1, 1968, or

"(2) shall terminate at the close of March 31, 1968, if he filed his notice of termination after December 31, 1967, and before April 1, 1968.

An individual whose coverage period terminated pursuant to paragraph (1) at the close of December 31, 1967, may, notwithstanding section 1837(b) (2) of such Act [section 1395p(b) (2) of this title], enroll in such program before April 1, 1968, and for purposes of sections 1838(a) (2) (E) [subsec. (a) (2) (E) of this section] and 1837(b) (2) of such Act [section 1395p(b) (2) of this title] such enrollment shall be deemed an enrollment under section 1837(e) of such Act [section 1395p(e) of this title] and a second enrollment under such part."

Coverage Period For Individuals Becoming Eligible in March 1966 Who Enroll in May 1966. Pub.L. 89–384, § 3(d), Apr. 8, 1966, 80 Stat. 105, provided that: "In the case of an individual who first satisfies paragraphs (1) and (2) of section 1836 of the Social Security Act [section 1395o of this title] in March 1966, and who enrolls pursuant to subsection (d) of section 1837 of such Act [section 1395p of this title] in May 1966, his coverage period shall, notwithstanding section 1838(a) (2) (D) of such Act [subsec. (a) (2) (D) of this section], begin on July 1, 1966."

Extension of 1967 General Enrollment Period Through March 31, 1968. Extension of the general enrollment period under section 1395p(e) of this title through March 31, 1968, see section 1 of Pub.L. 90–97, Sept. 30, 1967, 81 Stat. 249, set out as a note under section 1395p of this title.

Commencement of Coverage Period of Certain Enrollees. Commencement of coverage period upon enrollment before Oct. 1, 1966 of eligible individuals failing for good cause to enroll before June 1, 1966, see section 102(b) of Pub.L. 89–97, set out as a note under section 1395p of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub. L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1395r. Amounts of premiums

(a) The monthly premium of each individual enrolled under this part for each month before 1968 shall be $3.

(b) (1) The monthly premium of each individual enrolled under this part for each month after 1967 shall be the amount determined under paragraph (2).

(2) The Secretary shall, during December 1968 and of each year thereafter, determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums for months occurring in the 12-month period commencing July 1 in each succeeding year. Such dollar amount shall be such amount as the Secretary estimates to be necessary so that the aggregate premiums for such 12-month period will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for such 12-month period. In estimating aggregate benefits payable for any period, the Secretary shall include an appropriate amount for a contingency margin. Whenever the Secretary, pursuant to the preceding sentence, promulgates the dollar amount which shall be applicable for premiums for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of premiums so promulgated.

(c) In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1395p of this title), the monthly premium determined under subsection (b) of this section shall be increased by 10 percent of the monthly premium so determined for each full 12 months in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who enrolls for a second time) (2) the months which elapsed between the date of the termination of his first coverage period and the close of the enrollment period in which he enrolled for the second time.

(d) If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

Aug. 14, 1935, c. 531, Title XVIII, § 1839, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 305, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, § 145(d), 81 Stat. 859.

1968 Amendment. Subsec. (b) (2). Pub. L. 90–248 provided that the Secretary shall, during December of each year, beginning in 1968, determine and announce the amount (whether or not such amount was applicable for premiums for any prior month) of the supplementary medical insurance premium for the twelve month period beginning on July 1 of each following year, which premium is to be such that the aggregate premiums will equal one-half the estimated benefit and administrative expenses of the supplementary medical insurance program for such twelve month period, and that at the time of announcement of the premium amount, the Secretary must make public the actuarial assumptions and bases used in deciding the amount of the premium.

Effective Date of 1968 Amendment. Amendment by Pub.L. 90–248 effective Dec. 1, 1968, see section 145(e) of Pub.L. 90–248, set out as a note under section 1395p of this title.

Determination of Premium Amounts by Secretary. Pub.L. 90–97, § 2, Sept. 30, 1967, 81 Stat. 249, provided that:

"Notwithstanding the provisions of section 1839(a) and (b) of the Social Security Act [subsecs. (a) and (b) of this section]—

"(1) the dollar amount applicable for premiums under part B of title XVIII of such Act [this part] for each month before April 1968 shall be $3, and

"(2) the Secretary of Health, Education, and Welfare may determine and promulgate such dollar amount for months after March 1968 and before January 1970 at any time on or before December 31, 1967."

Persons Enrolling Before April 1, 1968 Who Did Not Enroll During Their Initial Enrollment Period. Pub.L. 90–97, § 3(b), Sept. 30, 1967, 81 Stat. 250, provided that: "In the case of any individual who did not enroll in the insurance program established under part B of title XVIII of the Social Security Act [this part] in his initial enrollment period, but does so enroll before April 1, 1968, the enrollment period in which he so enrolls shall, for purposes of section 1839(c) of such Act [subsec. (c) of this section], be deemed to have closed on December 31, 1967."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub. L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1395s. Payment of premiums

(a) (1) In the case of an individual who is entitled to monthly benefits under section 402 of this title, his monthly premiums under this part shall (except as provided in subsection (d) of this section) be collected by deducting the amount thereof from the amount of such monthly benefits. Such deduction shall be made in such manner and at such times as the Secretary shall by regulation prescribe.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates from benefits under section 402 of this title which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Secretary of Health, Education, and Welfare and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(b) (1) In the case of an individual who is entitled to receive for a month an annuity or pension under the Railroad Retirement Act of 1937, his monthly premiums under this part shall (except as provided in subsection (d) of this section) be collected by deducting the amount thereof from such annuity or pension. Such deduction shall be made in such manner and at such times as the Secretary shall by regulations prescribe. Such regulations shall be prescribed only after consultation with the Railroad Retirement Board.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Railroad Retirement Account to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfers shall be made on the basis of a certification by the Railroad Retirement Board and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(c) In the case of an individual who is entitled both to monthly benefits under section 402 of this title and to an annuity or pension under

the Railroad Retirement Act of 1937 at the time he enrolls under this part, subsection (a) of this section shall apply so long as he continues to be entitled both to such benefits and such annuity or pension. In the case of an individual who becomes entitled both to such benefits and such an annuity or pension after he enrolls under this part, subsection (a) of this section shall apply if the first month for which he was entitled to such benefits was the same as or earlier than the first month for which he was entitled to such annuity or pension, and otherwise subsection (b) of this section shall apply.

(d) If an individual to whom subsection (a) or (b) of this section applies estimates that the amount which will be available for deduction under such subsection for any premium payment period will be less than the amount of the monthly premiums for such period, he may (under regulations) pay to the Secretary such portion of the monthly premiums for such period as he desires.

(e) (1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of Title 5 or any other law administered by the Civil Service Commission providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (b) of this section applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) of this section applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health, Education, and Welfare to the Civil Service Commission, be collected by deducting the amount thereof from each installment of such annuity. Such deduction shall be made in such manner and at such times as the Civil Service Commission may determine. The Civil Service Commission shall furnish such information as the Secretary of Health, Education, and Welfare may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 of Title 5 may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law administered by the Civil Service Commission, to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the Civil Service Commission and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(f) In the case of an individual who participates in the insurance program established by this part but with respect to whom none of the preceding provisions of this section applies, or with respect to whom subsection (d) of this section applies, the premiums shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe.

(g) Amounts paid to the Secretary under subsection (d) or (f) of this section shall be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund.

(h) In the case of an individual who participates in the insurance program established by this part, premiums shall be payable for the period commencing with the first month of his coverage period and ending with the month in which he dies or, if earlier, in which his coverage under such program terminates.

(i) In the case of an individual who is enrolled under the program established by this part as a member of a coverage group to which an agree-

ment with a State entered into pursuant to section 1395v of this title is applicable, subsections (a), (b), (c), (d), and (e) of this section shall not apply to his monthly premium for any month in his coverage period which is determined under section 1395v (d) of this title.

Aug. 14, 1935, c. 531, Title XVIII, § 1840, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 306, and amended Apr. 8, 1966, Pub.L. 89–384, § 4(c), 80 Stat. 106; Jan. 2, 1968, Pub.L. 90–248, Title I, § 166, Title IV, § 403(g), 81 Stat. 874, 932.

References in Text. The Railroad Retirement Act of 1937, referred to in subsecs. (b) (1), (c), is classified to sections 228a to 228c—1, 228e–228h, and 228i to 228s—2 of Title 45, Railroads.

The Civil Service Retirement Act, referred to in subsec. (e) (1), is classified to chapter 83 of Title 5, Government Organization and Employees.

1968 Amendment. Subsec. (e). Pub.L. 90–248 provided for reimbursement of civil service retirement annuitants for certain premium payments under the supplementary medical insurance program, and substituted "subchapter III of chapter 83 of Title 5 or any other law" and "such other law" for "the Civil Service Retirement Act, or other Act" and "such other Act."

1966 Amendment. Subsec. (i). Pub.L. 89–384 added subsec. (i).

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 89–384, 1966 U.S. Code Cong. and Adm.News, p. 2101; Pub. L. 90–248, 1967 U.S.Code Cong. and Adm. News, p. 2834.

§ 1395t. Federal Supplementary Medical Insurance Trust Fund

(a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Supplementary Medical Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such amounts as may be deposited in, or appropriated to, such fund as provided in this part.

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Commissioner of Social Security shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second

Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(g) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g) (1) of this title.

(h) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to pay the costs incurred by the Civil Service Commission in making deductions pursuant to section 1395s(e) of this title. During each fiscal year, or after the close of such fiscal year, the Civil Service Commission shall certify to the Secretary the amount of the costs it incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

Aug. 14, 1935, c. 531, Title XVIII, § 1841, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 308, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, § 169(a), 81 Stat. 875.

1968 Amendment. Subsec. (b)(2). Pub. L. 90–248 substituted "April" for "March".

References in Text. The Second Liberty Bond Act, as amended, referred to in subsec. (e), is classified to sections 745, 752–754b, 757, 757b–758, 760, 764–766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub. L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1395u. Use of carriers for administration of benefits

(a) In order to provide for the administration of the benefits under this part with maximum efficiency and convenience for individuals entitled to benefits under this part and for providers of services and other persons furnishing services to such individuals, and with a view to furthering coordination of the administration of the benefits under part A and under this part, the Secretary is authorized to enter into contracts with carriers, including carriers with which agreements under section 1395h of this title are in effect, which will perform some or all of the following functions (or, to the extent provided in such contracts, will secure performance thereof by other organizations); and, with respect to any of the following functions which involve payments for physicians' services, the Secretary shall to the extent possible enter into such contracts:

(1) (A) make determinations of the rates and amounts of payments required pursuant to this part to be made to providers of services and other persons on a reasonable cost or reasonable charge basis (as may be applicable);

(B) receive, disburse, and account for funds in making such payments; and

(C) make such audits of the records of providers of services as may be necessary to assure that proper payments are made under this part;

(2) (A) determine compliance with the requirements of section 1395x(k) of this title as to utilization review; and

(B) assist providers of services and other persons who furnish services for which payment may be made under this part in the development of procedures relating to utilization practices, make studies of the effectiveness of such procedures and methods for their improvement, assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits under this part, and provide procedures for and assist in arranging, where necessary, the establishment of groups outside hospitals (meeting the requirements of section 1395x(k) (2) of this title) to make reviews of utilization;

(3) serve as a channel of communication of information relating to the administration of this part; and

(4) otherwise assist, in such manner as the contract may provide, in discharging administrative duties necessary to carry out the purposes of this part.

(b) (1) Contracts with carriers under subsection (a) of this section may be entered into without regard to section 5 of Title 41 or any other provision of law requiring competitive bidding.

(2) No such contract shall be entered into with any carrier unless the Secretary finds that such carrier will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(3) Each such contract shall provide that the carrier—

(A) will take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under section 1395x(v) of this title);

(B) will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policy holders and subscribers of the carrier, and such payment will (except as otherwise provided in section 1395gg(f) of this title) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which the reasonable charge is the full charge for the service;

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year);

(C) will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier when requests for payment under this part with respect to services furnished him are denied or are not acted upon with reasonable promptness or when the amount of such payment is in controversy;

(D) will furnish to the Secretary such timely information and reports as he may find necessary in performing his functions under this part; and

(E) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (D) and otherwise to carry out the purposes of this part;

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services.

(4) Each contract under this section shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the carrier involved as he may provide in regulations) if he finds that the carrier has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

(c) Any contract entered into with a carrier under this section shall provide for advances of funds to the carrier for the making of payments by it under this part, and shall provide for payment of the cost of administration of the carrier, as determined by the Secretary to be necessary and proper for carrying out the functions covered by the contract.

(d) Any contract with a carrier under this section may require such carrier or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(e) (1) No individual designated pursuant to a contract under this section as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such carrier shall be liable to the United States for any payments referred to in paragraph (1) or (2).

(f) For purposes of this part, the term "carrier" means—

(1) with respect to providers of services and other persons, a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization; and

(2) with respect to providers of services only, any agency or organization (not described in paragraph (1)) with which an agreement is in effect under section 1395h of this title.

Aug. 14, 1935, c. 531, Title XVIII, § 1842, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 309, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, §§ 125(a), (b), 154(a), 81 Stat. 845, 863.

1968 Amendment. Subsec. (b) (3) (B). Pub.L. 90–248 provided that payment be made on the basis of an itemized bill instead of a receipted bill as formerly required, and established a time limit within which payment may be requested, and inserted "(except as otherwise provided in section 1395gg(f) of this title)" after "payment will".

Effective Date of 1968 Amendment. Section 125(b) of Pub.L. 90–248 provided that: "The amendments made by subsection (a) [to subsec. (b) (3) (B) of this section] shall apply with respect to claims on which a final determination has not been made on or before the date of enactment of this Act [Jan. 2, 1968]."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub. L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1395v. State agreements for coverage of eligible individuals who are receiving money payments under public assistance programs or are eligible for medical assistance

(a) The Secretary shall, at the request of a State made before January 1, 1970, enter into an agreement with such State pursuant to which all eligible individuals in either of the coverage groups described in subsection (b) of this section (as specified in the agreement) will be enrolled under the program established by this part.

(b) An agreement entered into with any State pursuant to subsection (a) of this section may be applicable to either of the following coverage groups:

(1) individuals receiving money payments under the plan of such State approved under subchapter I or subchapter XVI of this chapter, or

(2) individuals receiving money payments under all of the plans of such State approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter;

Except as provided in subsection (g) of this section, there shall be excluded from any coverage group any individual who is entitled to monthly insurance benefits under subchapter II of this chapter or who is entitled to receive an annuity or pension under the Railroad Retirement Act of 1937.

(c) For purposes of this section, an individual shall be treated as an eligible individual only if he is an eligible individual (within the meaning of section 1395o of this title) on the date an agreement covering him is entered into under subsection (a) of this section or he becomes an eligible individual (within the meaning of such section) at any time after such date; and he shall be treated as receiving money payments described in subsection (b) of this section if he receives such payments for the month in which the agreement is entered into or any month thereafter.

(d) In the case of any individual enrolled pursuant to this section—

(1) the monthly premium to be paid by the State shall be determined under section 1395r of this title (without any increase under subsection (c) thereof);

(2) his coverage period shall begin on whichever of the following is the latest:

(A) July 1, 1966;

(B) the first day of the third month following the month in which the State agreement is entered into;

(C) the first day of the first month in which he is both an eligible individual and a member of a coverage group specified in the agreement under this section; or

(D) such date as may be specified in the agreement; and

(3) his coverage period attributable to the agreement with the State under this section shall end on the last day of whichever of the following first occurs:

(A) the month in which he is determined by the State agency to have become ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h) of this section) for medical assistance, or

(B) the month preceding the first month for which he becomes entitled to monthly benefits under subchapter II of this chapter or to an annuity or pension under the Railroad Retirement Act of 1937.

(e) Any individual whose coverage period attributable to the State agreement is terminated pursuant to subsection (d) (3) of this section shall be deemed for purposes of this part (including the continuation of his coverage period under this part) to have enrolled under section 1395p of this title in the initial general enrollment period provided by section 1395p(c) of this title.

(f) With respect to eligible individuals receiving money payments under the plan of a State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter, if the agreement entered into under this section so provides, the term "carrier" as defined in section 1395u(f) of this title also includes the State agency, specified in such agreement, which administers or supervises the administration of the plan of such State approved under subchapters I, XVI, or XIX of this chapter. The agreement shall also contain such provisions as will facilitate the financial transactions of the State and the carrier with respect to deductions, coinsurance, and otherwise, and as will lead to economy and efficiency of operation, with respect to individuals receiving money payments under plans of the State approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, and individuals eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter.

(g) (1) The Secretary shall, at the request of a State made before January 1, 1970, enter into a modification of an agreement entered into with such State pursuant to subsection (a) of this section under which the second sentence of subsection (b) of this section shall not apply with respect to such agreement.

(2) In the case of any individual who would (but for this subsection) be excluded from the applicable coverage group described in subsection (b) of this section by the second sentence of such subsection—

(A) subsections (c) and (d)(2) of this section shall be applied as if such subsections referred to the modification under this subsection (in lieu of the agreement under subsection (a) of this section),

(B) subsection (d)(3)(B) of this section shall not apply so long as there is in effect a modification entered into by the State under this subsection, and

(C) notwithstanding subsection (e) of this section, in the case of any termination described in such subsection, such individual may terminate his enrollment under this part by the filing of a notice, before the close of the third month which begins after the date of

such termination, that he no longer wishes to participate in the insurance program established by this part (and in such a case, the termination of his coverage period under this part shall take effect as of the close of such third month).

(h) (1) The Secretary shall, at the request of a State made before January 1, 1970, enter into a modification of an agreement entered into with such State pursuant to subsection (a) of this section under which the coverage group described in subsection (b) of this section and specified in such agreement is broadened to include individuals who are eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter.

(2) For purposes of this section, an individual shall be treated as eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter if, for the month in which the modification is entered into under this subsection or for any month thereafter, he has been determined to be eligible to receive medical assistance under such plan. In the case of any individual who would (but for this subsection) be excluded from the agreement, subsections (c) and (d) (2) of this section shall be applied as if they referred to the modification under this subsection (in lieu of the agreement under subsection (a) of this section), and subsection (d) (2) (C) of this section shall be applied by substituting "second month following the first month" for "first month".

Aug. 14, 1935, c. 531, Title XVIII, § 1843, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 312, and amended Apr. 8, 1966, Pub.L. 89–384, § 4(a), (b), 80 Stat. 105; Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 222(a), (b), (e), 241(e), 81 Stat. 900, 901, 917.

References in Text. The Railroad Retirement Act of 1937, referred to in subsecs. (b), (d) (3) (B), (g), is classified to sections 228a to 228c—1, 228e–228h, and 228i to 228s—2 of Title 45, Railroads.

1968 Amendment. Pub.L. 90–248, § 222 (b) (4), added to the catchline "or are eligible for medical assistance".

Subsec. (a). Pub.L. 90–248, § 222(e) (1), substituted "1970" for "1968".

Subsec. (b) (2). Pub.L. 90–248, § 241(e) (1), deleted "IV," following "I," and inserted ", and part A of subchapter IV of this chapter" after "XVI of this chapter".

Subsec. (c). Pub.L. 90–248, § 222(e) (2), struck out "and before January 1, 1968" following "such date" and "before January 1968" following "thereafter" just before the period.

Subsec. (d) (2) (D). Pub.L. 90–248, § 222(e) (3), struck out "(not later than January 1, 1968)" following "such date".

Subsec. (d) (3) (A). Pub.L. 90–248, § 222(b) (1), substituted "ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h) of this section) for medical assistance" for "ineligible for money payments of a kind specified in the agreement".

Subsec. (f). Pub.L. 90–248, § 222(b) (2), inserted "or eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter" and ", and individuals eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter" following "or part A of subchapter IV of this chapter" and ", and part A of subchapter IV of this chapter", respectively.

Pub.L. 90–248, § 241(e) (2), deleted "IV," preceding "X," in two instances, and inserted "or part A of subchapter IV of this chapter," after "XVI of this chapter," the first place it appears in the first sentence and ", and part A of subchapter IV of this chapter" after "XVI of this chapter" in the second sentence.

Subsec. (g) (1). Pub.L. 90–248, § 222 (b) (3), substituted "1970" for "1968".

Subsec. (h). Pub.L. 90–248, § 222(a), added subsec. (h).

1966 Amendment. Subsec. (b). Pub.L. 89–384, § 4(a). inserted a reference to subsec. (g) in the exclusionary provision.

Subsec. (g). Pub.L. 89–384, § 4(b), added subsec. (g).

District of Columbia; Agreement of Commissioner With Secretary for Supplementary Medical Insurance. Pub.L. 90–227, § 2, Dec. 27, 1967, 81 Stat. 745, provided that: "The Commissioner [of the District of Columbia] may enter into an agreement (and any modifications of such agreement) with the Secretary under section 1843 of the Social Security Act [this section] pursuant to which (1) eligible individuals (as defined in section 1836 of the Social Security Act) [section 1395o of this title] who are eligible to receive medical assistance under the District of Columbia's plan for medical assistance approved under title XIX of the Social Security Act [subchapter XIX of this chapter] will be enrolled in the supplementary medical insurance program established under part B of title XVIII of the Social Security Act [this Part], and (2) provisions will be made for payment of the monthly premiums of such individuals for such program."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 89–384, 1966 U.S. Code Cong. and Adm.News, p. 2101; Pub. L. 90–248, 1967 U.S.Code Cong. and Adm. News, p. 2834.

§ 1395w. Appropriations to cover Government contributions and contingency reserve

(a) There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1) a Government contribution equal to the aggregate premiums payable under this part and deposited in the Trust Fund, and

(2) such sums as the Secretary deems necessary to place the Trust Fund, at the end of any fiscal year occurring after June 30, 1967, in the same position in which it would have been at the end of such fiscal year if (A) a Government contribution representing the excess of the premiums deposited in the Trust Fund during the fiscal year ending June 30, 1967, over the Government contribution actually appropriated to the Trust Fund during such fiscal year had been appropriated to it on June 30, 1967, and (B) the Government contribution for premiums deposited in the Trust Fund after June 30, 1967, had been appropriated to it when such premiums were deposited.

(b) In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part, and to provide a contingency reserve, there is also authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available through the calendar year 1969 for repayable advances (without interest) to the Trust Fund, an amount equal to $18 multiplied by the number of individuals (as estimated by the Secretary) who could be covered in July 1966 by the insurance program established by this part if they had theretofore enrolled under this part.

Aug. 14, 1935, c. 531, Title XVIII, § 1844, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 313, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, § 167, 81 Stat. 874.

1968 Amendment. Subsec. (a). Pub.L. 90–248, § 167(a), designated existing provisions as par. (1), provided therein for deposit of Government contribution in the Trust Fund, and added par. (2).

Subsec. (b). Pub.L. 90–248, § 167(b), substituted "1969" for "1967".

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S.Code Cong. and Adm.News, p. 2834.

PART C.—MISCELLANEOUS PROVISIONS

§ 1395x. Definitions—Spell of illness

For purposes of this subchapter—

(a) The term "spell of illness" with respect to any individual means a period of consecutive days—

(1) beginning with the first day (not included in a previous spell of illness) (A) on which such individual is furnished inpatient hospital services or extended care services, and (B) which occurs in a month for which he is entitled to benefits under part A, and

(2) ending with the close of the first period of 60 consecutive days thereafter on each of which he is neither an inpatient of a hospital nor an inpatient of an extended care facility.

Inpatient hospital services

(b) The term "inpatient hospital services" means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

(1) bed and board;

(2) such nursing services and other related services, such use of hospital facilities, and such medical social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients; and

(3) such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements;

excluding, however—

(4) medical or surgical services provided by a physician, resident, or intern; and

(5) the services of a private-duty nurse or other private-duty attendant.

Paragraph (4) shall not apply to services provided in the hospital by an intern or a resident-in-training under a teaching program approved by the Council on Medical Education of the American Medical Association or, in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of dentistry, approved by the Council on Dental Education of the American Dental Association.

Inpatient psychiatric hospital services

(c) The term "inpatient psychiatric hospital services" means inpatient hospital services furnished to an inpatient of a psychiatric hospital.

Inpatient tuberculosis hospital services

(d) The term "inpatient tuberculosis hospital services" means inpatient hospital services furnished to an inpatient of a tuberculosis hospital.

Hospital

(e) The term "hospital" (except for purposes of sections 1395f(d) and 1395n(d) of this title, subsection (a) (2) of this section, paragraph (7) of this subsection, and subsections (i) and (n) of this section) means an institution which—

(1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) maintains clinical records on all patients;

(3) has bylaws in effect with respect to its staff of physicians;

(4) has a requirement that every patient must be under the care of a physician;

(5) provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a license practical nurse or registered professional nurse on duty at all times;

(6) has in effect a hospital utilization review plan which meets the requirements of subsection (k) of this section;

(7) in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing; and

(8) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution, except that such other requirements may not be higher than the comparable requirements prescribed for the accreditation of hospitals by the Joint Commission on Accreditation of Hospitals (subject to the second sentence of section 1395z of this title).

For purposes of subsection (a) (2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection. For purposes of sections 1395f(d) and 1395n(b) of this title (in-

cluding determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), and subsections (i) and (n) of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in section 1395x(j) (1) (A) of this title and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of section 1395x(r) of this title, to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a) (2) of this section, include any institution which is primarily for the care and treatment of mental diseases or tuberculosis unless it is a tuberculosis hospital (as defined in subsection (g) of this section) or unless it is a psychiatric hospital (as defined in subsection (f) of this section). The term "hospital" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to items and services ordinarily furnished by such institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations. For provisions deeming certain requirements of this subsection to be met in the case of accredited institutions, see section 1395bb of this title.

Psychiatric hospital

(f) The term "psychiatric hospital" means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(2) satisfies the requirements of paragraphs (3) through (8) of subsection (e) of this section;

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A;

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and

(5) is accredited by the Joint Commission on Accreditation of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "psychiatric hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

Tuberculosis hospital

(g) The term "tuberculosis hospital" means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis;

(2) satisfies the requirements of paragraphs (3) through (8) of subsection (e) of this section;

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree

and intensity of the treatment provided to individuals covered by the insurance program established by part A;

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and

(5) is accredited by the Joint Commission on Accreditation of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "tuberculosis hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

Extended care services

(h) The term "extended care services" means the following items and services furnished to an inpatient of an extended care facility and (except as provided in paragraphs (3) and (6)) by such extended care facility—

(1) nursing care provided by or under the supervision of a registered professional nurse;

(2) bed and board in connection with the furnishing of such nursing care;

(3) physical, occupational, or speech therapy furnished by the extended care facility or by others under arrangements with them made by the facility;

(4) medical social services;

(5) such drugs, biologicals, supplies, appliances, and equipment, furnished for use in the extended care facility, as are ordinarily furnished by such facility for the care and treatment of inpatients;

(6) medical services provided by an intern or resident-in-training of a hospital with which the facility has in effect a transfer agreement (meeting the requirements of subsection (*l*) of this section), under a teaching program of such hospital approved as provided in the last sentence of subsection (b), of this section, and other diagnostic or therapeutic services provided by a hospital with which the facility has such an agreement in effect; and

(7) such other services necessary to the health of the patients as are generally provided by extended care facilities;

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital.

Post-hospital extended care services

(i) The term "post-hospital extended care services" means extended care services furnished an individual after transfer from a hospital in which he was an inpatient for not less than 3 consecutive days before his discharge from the hospital in connection with such transfer. For purposes of the preceding sentence, items and services shall be deemed to have been furnished to an individual after transfer from a hospital, and he shall be deemed to have been an inpatient in the hospital immediately before transfer therefrom, if he is admitted to the extended care facility within 14 days after discharge from such hospital; and an individual shall be deemed not to have been discharged from an extended care facility if, within 14 days after discharge therefrom, he is admitted to such facility or any other extended care facility.

Extended care facility

(j) The term "extended care facility" means (except for purposes of subsection (a) (2) of this section) an institution (or a distinct part of an institution) which has in effect a transfer agreement (meeting the requirements of subsection (*l*) of this section) with one or more hospitals having agreements in effect under section 1395cc of this title and which—

(1) is primarily engaged in providing to inpatients (A) skilled nursing care and related services for patients who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) has policies, which are developed with the advice of (and with provision of review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides;

(3) has a physician, a registered professional nurse, or a medical staff responsible for the execution of such policies;

(4) (A) has a requirement that the health care of every patient must be under the supervision of a physician, and (B) provides for having a physician available to furnish necessary medical care in case of emergency;

(5) maintains clinical records on all patients;

(6) provides 24-hour nursing service which is sufficient to meet nursing needs in accordance with the policies developed as provided in paragraph (2), and has at least one registered professional nurse employed full time;

(7) provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals;

(8) has in effect a utilization review plan which meets the requirements of subsection (k) of this section;

(9) in the case of an institution in any State in which State or applicable local law provides for the licensing of institutions of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(10) meets such other conditions relating to the health and safety of individuals who are furnished services in such institution or relating to the physical facilities thereof as the Secretary may find necessary (subject to the second sentence of section 1395z of this title);

except that such term shall not (other than for purposes of subsection (a) (2) of this section) include any institution which is primarily for the care and treatment of mental diseases or tuberculosis. For purposes of subsection (a) (2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection. The term "extended care facility" also includes an institution described in paragraph (1) of subsection (y) of this section, to the extent and subject to the limitations provided in such subsection.

Utilization review

(k) A utilization review plan of a hospital or extended care facility shall be considered sufficient if it is applicable to services furnished by the institution to individuals entitled to insurance benefits under this subchapter and if it provides—

(1) for the review, on a sample or other basis, of admissions to the institution, the duration of stays therein, and the professional services (including drugs and biologicals) furnished, (A) with respect to the medical necessity of the services, and (B) for the purpose of promoting the most efficient use of available health facilities and services;

(2) for such review to be made by either (A) a staff committee of the institution composed of two or more physicians, with or without participation of other professional personnel, or (B) a group outside the institution which is similarly composed and (i) which is established by the local medical society and some or all of the

hospitals and extended care facilities in the locality, or (ii) if (and for as long as) there has not been established such a group which serves such institution, which is established in such other manner as may be approved by the Secretary;

(3) for such review, in each case of inpatient hospital services or extended care services furnished to such an individual during a continuous period of extended duration, as of such days of such period (which may differ for different classes of cases) as may be specified in regulations, with such review to be made as promptly as possible, after each day so specified, and in no event later than one week following such day; and

(4) for prompt notification to the institution, the individual, and his attending physician of any finding (made after opportunity for consultation to such attending physician) by the physician members of such committee or group that any further stay in the institution is not medically necessary.

The review committee must be composed as provided in clause (B) of paragraph (2) rather than as provided in clause (A) of such paragraph in the case of any hospital or extended care facility where, because of the small size of the institution, or (in the case of an extended care facility) because of lack of an organized medical staff, or for such other reason or reasons as may be included in regulations, it is impracticable for the institution to have a properly functioning staff committee for the purposes of this subsection.

Agreements for transfer between extended care facilities and hospitals

(*l*) A hospital and an extended care facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case the two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that—

(1) transfer of patients will be effected between the hospital and the extended care facility whenever such transfer is medically appropriate as determined by the attending physician; and

(2) there will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.

Any extended care facility which does not have such an agreement in effect, but which is found by a State agency (of the State in which such facility is situated) with which an agreement under section 1395aa of this title is in effect (or, in the case of a State in which no such agency has an agreement under section 1395aa of this title, by the Secretary) to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of patients and the information referred to in paragraph (2), shall be considered to have such an agreement in effect if and for so long as such agency (or the Secretary, as the case may be) finds that to do so is in the public interest and essential to assuring extended care services for persons in the community who are eligible for payments with respect to such services under this subchapter.

Home health services

(m) The term "home health services" means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7),

provided on a visiting basis in a place of residence used as such individual's home—

(1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;

(2) physical, occupational, or speech therapy;

(3) medical social services under the direction of a physician;

(4) to the extent permitted in regulations, part-time or intermittent services of a home health aide;

(5) medical supplies (other than drugs and biologicals), and the use of medical appliances, while under such a plan;

(6) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in the last sentence of subsection (b) of this section; and

(7) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or extended care facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and—

(A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or

(B) which are furnished at such facility while he is there to receive any such item or service described in clause (A),

but not including transportation of the individual in connection with any such item or service;

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital.

Post-hospital home health services

(n) The term "post-hospital home health services" means home health services furnished an individual within one year after his most recent discharge from a hospital of which he was an inpatient for not less than 3 consecutive days or (if later) within one year after his most recent discharge from an extended care facility of which he was an inpatient entitled to payment under part A for post-hospital extended care services, but only if the plan covering the home health services (as described in subsection (m) of this section) is established within 14 days after his discharge from such hospital or extended care facility.

Home health agency

(o) The term "home health agency" means a public agency or private organization, or a subdivision of such an agency or organization, which—

(1) is primarily engaged in providing skilled nursing services and other therapeutic services;

(2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;

(3) maintains clinical records on all patients;

(4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing; and

(5) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization;

except that such term shall not include a private organization which is not a nonprofit organization exempt from Federal income taxation under section 501 of Title 26 (or a subdivision of such organization) unless it is licensed pursuant to State law and it meets such additional standards and requirements as may be prescribed in regulations; and except that for purposes of part A such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases.

Outpatient physical therapy services

(p) The term "outpatient physical therapy services" means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient—

(1) who is under the care of a physician (as defined in section 1395x(r)(1) of this title), and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established, and is periodically reviewed, by a physican (as so defined);

excluding, however—

(3) any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital; and

(4) any such service—

(A) if furnished by a clinic or rehabilitation agency, or by others under arrangements with such clinic or agency, unless such clinic or rehabilitation agency—

(i) provides an adequate program of physical therapy services for outpatients and has the facilities and personnel required for such program or required for the supervision of such a program, in accordance with such requirements as the Secretary may specify,

(ii) has policies, established by a group of professional personnel, including one or more physicians (associated with the clinic or rehabilitation agency) and one or more qualified physical therapists, to govern the services (referred to in clause (i)) it provides,

(iii) maintains clinical records on all patients,

(iv) if such clinic or agency is situated in a State in which State or applicable local law provides for the licensing of institutions of this nature, (I) is licensed pursuant to such law, or (II) is approved by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(v) meets such other conditions relating to the health and safety of individuals who are furnished services by such clinic or agency on an outpatient basis, as the Secretary may find necessary, or

(B) if furnished by a public health agency, unless such agency meets such other conditions relating to health and safety of individuals who are furnished services by such agency on an outpatient basis, as the Secretary may find necessary.

Physicians' services

(q) The term "physicians' services" means professional services performed by physicians, including surgery, consultation, and home, office, and institutional calls (but not including services described in the last sentence of subsection (b) of this section).

Physician

(r) The term "physician", when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1301(a) (7) of this title), (2) a doctor of dentistry or of dental or oral surgery who is legally authorized to practice dentistry by the State in which he performs such function but only with respect to (A) surgery related to the jaw or any structure contiguous to the jaw or (B) the reduction of any fracture of the jaw or any facial bone, or (3) except for the purposes of section 1395f(a), section 1395n of this title, and subsections (j), (k), (m), and (*o*) of this section, a doctor of podiatry or surgical chiropody, but (unless clause (1) of this subsection also applies to him) only with respect to functions which he is legally authorized to perform as such by the State in which he performs them.

Medical and other health services

(s) The term "medical and other health services" means any of the following items or services:

(1) physicians' services;

(2) (A) services and supplies (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) furnished as an incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills;

(B) hospital services (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) incident to physicians' services rendered to outpatients;

(C) diagnostic services which are—

(i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and

(ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study; and

(D) outpatient physical therapy services;

(3) diagnostic X-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient's home, if the performance of such tests meets such conditions relating to health and safety as the Secretary may find necessary), diagnostic laboratory tests, and other diagnostic tests;

(4) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians;

(5) surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;

(6) durable medical equipment, including iron lungs, oxygen tents, hospital beds, and wheelchairs used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) or (j)(1) of this section) whether furnished on a rental basis or purchased;

(7) ambulance service where the use of other methods of transportation is contraindicated by the individual's condition, but only to the extent provided in regulations;

(8) prosthetic devices (other than dental) which replace all or part of an internal body organ, including replacement of such devices; and

(9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition.

No diagnostic tests performed in any laboratory which is independent of a physician's office or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1395f (d) of this title) shall be included within paragraph (3) unless such laboratory—

(10) if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

(11) meets such other conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which—

(12) would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital; or

(13) is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.

None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section 1395f(d) of this title shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

Drugs and biologicals

(t) The term "drugs" and the term "biologicals", except for purposes of subsection (m) (5) of this section, include only such drugs and biologicals, respectively, as are included (or approved for inclusion) in the United States Pharmacopoeia, the National Formulary, or the United States Homeopathic Pharmacopoeia, or in New Drugs or Accepted Dental Remedies (except for any drugs and biologicals unfavorably evaluated therein), or as are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of the hospital furnishing such drugs and biologicals for use in such hospital.

Provider of services

(u) The term "provider of services" means a hospital, extended care facility, or home health agency.

Reasonable cost; semi-private accommodations

(v)(1) The reasonable cost of any services shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates

of costs of particular items or services, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (A) take into account both direct and indirect costs of providers of services in order that, under the methods of determining costs, the costs with respect to individuals covered by the insurance programs established by this subchapter will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (B) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive. Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any fiscal period shall not exceed one and one-half times the average of the rates of interest, for each of the months any part of which is included in such fiscal period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(2) (A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this subchapter with respect to such services may not exceed an amount equal to the reasonable cost of such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this subchapter furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the equivalent of the reasonable cost of the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this subchapter, the amount of the payment with respect to such bed and board under part A shall be the reasonable cost of such bed and board furnished in semi-private accommodations (determined pursuant to paragraph (1)) minus the difference between the charge customarily made by the hospital or extended care facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

(4) For purposes of this subsection, the term "semi-private accommodations" means two-bed, three-bed, or four-bed accommodations.

Arrangements for certain services

(w) The term "arrangements" is limited to arrangements under which receipt of payment by the hospital, extended care facility, or home health agency (whether in its own right or as agent), with respect to services for which an individual is entitled to have payment made under this subchapter, discharges the liability of such individual or any other person to pay for the services.

State and United States

(x) The terms "State" and "United States" have the meaning given to them by subsections (h) and (i), respectively, of section 410 of this title.

Post-hospital extended care in Christian Science extended care facilities

(y) (1) The term "extended care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only (except for purposes of subsection (a) (2) of this section) with respect to items and services ordinarily furnished by such an institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations.

(2) Notwithstanding any other provision of this subchapter, payment under part A may not be made for services furnished an individual in an extended care facility to which paragraph (1) applies unless such individual elects, in accordance with regulations, for a spell of illness to have such services treated as post-hospital extended care services for purposes of such part; and payment under part A may not be made for post-hospital extended care services—

(A) furnished an individual during such spell of illness in an extended care facility to which paragraph (1) applies after—

(i) such services have been furnished to him in such a facility for 30 days during such spell, or

(ii) such services have been furnished to him during such spell in an extended care facility to which such paragraph does not apply; or

(B) furnished an individual during such spell of illness in an extended care facility to which paragraph (1) does not apply after such services have been furnished to him during such spell in an extended care facility to which such paragraph applies.

(3) The amount payable under part A for post-hospital extended care services furnished an individual during any spell of illness in an extended care facility to which paragraph (1) applies shall be reduced by a co-insurance amount equal to one-eighth of the inpatient hospital deductible for each day before the 31st day on which he is furnished such services in such a facility during such spell (and the reduction under this paragraph shall be in lieu of any reduction under section 1395e(a) (3) of this title).

(4) For purposes of subsection (i) of this section, the determination of whether services furnished by or in an institution described in paragraph (1) constitute post-hospital extended care services shall be made in accordance with and subject to such conditions, limitations, and requirements as may be provided in regulations.

Aug. 14, 1935, c. 531, Title XVIII, § 1861, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 313, and amended Nov. 2, 1966, Pub.L. 89–713, § 7, 80 Stat. 1111; Jan. 2, 1968, Pub.L. 90–248, Title I, §§ 127 (a), 129(a), (b), (c) (9) (c), (10), (11), 132(a), 133, 134(a), 143(a), 144(a)–(d), 81 Stat. 846–850, 852, 857, 858.

1968 Amendment. Subsec. (e). Pub.L. 90–248, § 129(c) (9) (C) (i), (ii), added reference to section 1395n(b) in first and third sentences and inserted "or diagnostic services" after "hospital services" in third sentence.

Pub.L. 90–248, § 143(a), in second sentence after par. (8), changed the definition of hospitals for purposes of making payments for emergency hospital services by deleting provision that hospital meet requirements of pars. (1)–(4), by requiring that such hospitals have full-time nursing services, be licensed as a hospital, and be primarily engaged in providing not nursing care and related services but medical or rehabilitative care by or under the supervision of a doctor of medicine or osteopathy.

Subsec. (p). Pub.L. 90–248, §§ 129(c) (10), 133(b), repealed definition of "outpatient hospital diagnostic services" and inserted definition of "outpatient physical therapy services", respectively.

Subsec. (r). Pub.L. 90–248, § 127(a), added clause (3).

Subsec. (s). Pub.L. 90–248, § 144(a)–(c), deleted "(unless they would otherwise

constitute inpatient hospital services, extended care services, or home health services)" following "items or services" in text preceding par. (1), inserted after "hospital" in sentence following par. (9) "(which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1395f(d) of this title)", and added sentence following par. (13) providing that medical and other health services (other than physicians' services and services incident to physicians' services) furnished a patient of a facility which meets the definition of a hospital for emergency services will be covered under the medical insurance program only if such facility satisfies such health and safety requirements as are appropriate for the item or service furnished as the Secretary may determine are necessary.

Subsec. (s) (2) (A)–(C). Pub.L. 90–248, § 129(a), designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (s) (2) (D). Pub.L. 90–248, § 133(a), added subpar. (D).

Subsec. (s) (3). Pub.L. 90–248, § 134(a), included in medical and other health services diagnostic X-ray tests furnished in the patient's home under the supervision of a physician if the tests meet such health and safety conditions as the Secretary finds necessary.

Subsec. (s) (6). Pub.L. 90–248, § 132(a), provided that payments may be made with respect to expenses incurred in the purchase as well as in the rental of durable medical equipment.

Pub.L. 90–248, § 144(d), inserted after "home" in par. (6) "other than an institution that meets the requirements of subsection (e) (1) or (j) (1) of this section".

Subsec. (s) (12), (13). Pub.L. 90–248, § 129(b), added pars. (12) and (13) which excluded from the diagnostic services referred to in par. (2) (C) (other than physician's services) certain items or services.

Subsec. (y) (3). Pub.L. 90–248, § 129(c) (11), substituted "1395e(a) (3)" for "1395e (a) (4)".

1966 Amendment. Subsec. (v) (1). Pub. L. 89–713 added provisions which required that, in the case of extended care services furnished by proprietary facilities, the regulations include provision for specific recognition of a reasonable return on equity capital and which placed a limitation on the rate of return of one and one-half times the average of the rates of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

Effective Date of 1968 Amendment. Section 127(c) of Pub.L. 90–248 provided that: "The amendments made by subsections (a) and (b) [to subsec. (r) of this section and section 1395y(a) of this title] shall apply with respect to services furnished after December 31, 1967."

Amendment of subsecs. (e), (p), (s), and (y) of this section by section 129(a), (b), (c) (9), (10), and (11) of Pub.L. 90–248, applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub.L. 90–248 set out as a note under section 1395d of this title.

Amendment of subsec. (s) (6) of this section by section 132(a) of Pub.L. 90–248, applicable with respect to items purchased after December 31, 1967, see section 132(c) of Pub.L. 90–248 set out as a note under section 1395*l* of this title.

Amendment of subsecs. (p) and (s) of this section by section 133(a), (b) of Pub. L. 90–248, applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub.L. 90–248 set out as a note under section 1395k of this title.

Section 134(b) of Pub.L. 90–248 provided that: "The amendment made by subsection (a) [to subsec. (s) (3) of this section] shall apply with respect to services furnished after December 31, 1967."

Amendment of subsec. (e) of this section by section 143(a) of Pub.L. 90–248, effective as of July 1, 1966, see section 143(d) of Pub.L. 90–248 set out as a note under section 1395d of this title.

Section 144(e) of Pub.L. 90–248 provided that: "The amendments made by this section [amending subsec. (s) of this section] shall apply with respect to services furnished after March 31, 1968."

Effective Date of 1966 Amendment. Amendment by Pub.L. 89–713 to take effect on the date of enactment of Pub.L. 89–713, which was approved on Nov. 2, 1966, see section 6 of Pub.L. 89–713, set out as a note under section 6091 of Title 26, Internal Revenue Code.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 89–713, 1966 U.S. Code Cong. and Adm.News, p. 3676; Pub. L. 90–248, 1967 U.S.Code Cong. and Adm. News, p. 2834.

§ 1395y. Exclusions from coverage

(a) Notwithstanding any other provision of this subchapter, no payment may be made under part A or part B for any expenses incurred for items or services—

(1) which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member;

(2) for which the individual furnished such items or services has no legal obligation to pay, and which no other person (by reason of such individual's membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for;

(3) which are paid for directly or indirectly by a governmental entity (other than under this chapter and other than under a health benefits or insurance plan established for employees of such an entity), except in such cases as the Secretary may specify;

(4) which are not provided within the United States (except for emergency inpatient hospital services furnished outside the United States under the conditions described in section 1395(f) of this title);

(5) which are required as a result of war, or of an act of war, occurring after the effective date of such individual's current coverage under such part;

(6) which constitute personal comfort items;

(7) where such expenses are for routine physical checkups, eyeglasses or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state of the eyes, hearing aids or examinations therefor, or immunizations;

(8) where such expenses are for orthopedic shoes or other supportive devices for the feet;

(9) where such expenses are for custodial care;

(10) where such expenses are for cosmetic surgery or are incurred in connection therewith, except as required for the prompt repair of accidental injury or for improvement of the functioning of a malformed body member;

(11) where such expenses constitute charges imposed by immediate relatives of such individual or members of his household;

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth; or

(13) where such expenses are for—

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor,

(B) the treatment of subluxations of the foot, or

(C) routine foot care (including the cutting or removal of corns, warts, or calluses, the trimming of nails, and other routine hygienic care).

(b) Payment under this subchapter may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made (as determined in accordance with regulations), with respect to such item or service, under a workmen's compensation law or plan of the United States or a State. Any payment under this subchapter with respect to any item or service shall be conditioned on reimbursement to the appropriate Trust Fund established by this subchapter when notice or other information is received that payment for such item or service has been made under such a law or plan.

Aug. 14, 1935, c. 531, Title XVIII, § 1862, as added July 30, 1965, Pub. L. 89–97, Title I, § 102(a), 79 Stat. 325, and amended Jan. 2, 1968, Pub. L. 90–248, Title I, §§ 127(b), 128, 81 Stat. 846, 847.

1968 Amendment. Subsec. (a) (7). Pub. L. 90–248, § 128, prohibited payment for procedures performed (during the course of any eye examination) to determine the refractive state of the eyes.

Subsec. (a) (13). Pub.L. 90–248, § 127 (b), added par. (13).

Effective Date of 1968 Amendment. Amendment of subsec. (a) (11)–(13) by section 127(b) of Pub.L. 90–248, applicable with respect to services furnished after Dec. 31, 1967, see section 127(c) of Pub.L. 90–248 set out as a note under section 1395x of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1395z. Consultation with State agencies and other organizations to develop conditions of participation for providers of services

In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections (e) (8), (f) (4), (g) (4), (j) (10), and (o) (5) of section 1395x of this title, the Secretary shall consult with the Health Insurance Benefits Advisory Council established by section 1395dd of this title, appropriate State agencies, and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of such subsections may be varied for different areas or different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State

which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a State plan approved under subchapter I, XVI, or XIX of this chapter, the Secretary shall impose like requirements as a condition to the payment for services (or for the services specified by the State or subdivision) in such institutions in such State or subdivision. Aug. 14, 1935, c. 531, Title XVIII, § 1863, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 325.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395aa. Use of State agencies to determine compliance by providers of services with conditions of participation

(a) The Secretary shall make an agreement with any State which is able and willing to do so under which the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by him for the purpose of determining whether an institution therein is a hospital or extended care facility, or whether an agency therein is a home health agency, or whether a laboratory meets the requirements of paragraphs (10) and (11) of section 1395x(s) of this title, or whether a clinic, rehabilitation agency or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1395x(p)(4) of this title. To the extent that the Secretary finds it appropriate, an institution or agency which such a State (or local) agency certifies is a hospital, extended care facility, or home health agency (as those terms are defined in section 1395x of this title) may be treated as such by the Secretary. The Secretary may also, pursuant to agreement, utilize the services of State health agencies and other appropriate State agencies (and the appropriate local agencies) to do any one or more of the following: (1) to provide consultative services to institutions or agencies to assist them (A) to establish and maintain fiscal records necessary for purposes of this subchapter, or otherwise to qualify as hospitals, extended care facilities, or home health agencies, or (B) to provide information which may be necessary to permit determination under this subchapter as to whether payments are due and the amounts thereof, and (2) to provide consultative services to institutions, agencies, or organizations to assist in the establishment of utilization review procedures meeting the requirements of section 1395x(k) of this title and in evaluating their effectiveness.

(b) The Secretary shall pay any such State, in advance or by way of reimbursement, as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (a) of this section, and for the Federal Hospital Insurance Trust Fund's fair share of the costs attributable to the planning and other efforts directed toward coordination of activities in carrying out its agreement and other activities related to the provision of services similar to those for which payment may be made under part A, or related to the facilities and personnel required for the provision of such services, or related to improving the quality of such services.

Aug. 14, 1935, c. 531, Title XVIII, § 1864, as added July 30, 1965, Pub. L. 89–97, Title I, § 102(a), 79 Stat. 326, and amended Jan. 2, 1968, Pub. L. 90–248, Title I, § 133(f), 81 Stat. 852.

Repeals

Section 228(b) of Pub.L. 90–248, Title II, Jan. 2, 1968, 81 Stat. 904, repealed, effective July 1, 1969, last sentence of subsec. (a) providing for utilization of State facilities to provided consultative services to institutions furnishing medical care, superseded effective July 1, 1969, by section 1396a(a)(24) of this title.

1968 Amendment. Subsec. (a). Pub.L. 90–248 added clause at end of first sentence for determining whether a clinic, rehabilitation agency, or public health agency meets the requirements of section 1395x(p) (4) (A) or (B) of this title.

Effective Date of 1968 Amendment. Amendment of subsec. (a) of this section by section 133(f) of Pub.L. 90–248, applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub.L. 90–248 set out as a note under section 1395k of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1395bb. Effect of accreditation

Except as provided in the second sentence of section 1395z of this title, an institution shall be deemed to meet the requirements of the numbered paragraphs of section 1395x(e) of this title (except paragraph (6) thereof) if such institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals. If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan or imposes another requirement which serves substantially the same purpose, the Secretary is authorized to find that all institutions so accredited by the Commission comply also with section 1395x(e) (6) of this title. In addition, if the Secretary finds that accreditation of an institution or agency by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1395x(e), (j), or (o) of this title, as the case may be, are met, he may, to the extent he deems it appropriate, treat such institution or agency as meeting the condition or conditions with respect to which he made such finding. Aug. 14, 1935, c. 531, Title XVIII, § 1865, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 326.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395cc. Agreements with providers of services

(a) (1) Any provider of services shall be qualified to participate under this subchapter and shall be eligible for payments under this subchapter if it files with the Secretary an agreement—

(A) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this subchapter (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this subchapter or for which such provider is paid pursuant to the provisions of section 1395f(e) of this title), and

(B) to make adequate provision for return (or other disposition, in accordance with regulations) of any moneys incorrectly collected from such individual or other person.

(2) (A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1395e(a) (1), or (a) (3), section 1395*l*(b), or section 1395x(y) (3) of this title with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider). and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B. In the case of items and services described in section 1395*l*(c) of this title, clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section.

(B) Where a provider of services has furnished, at the request of such individual, items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this subchapter, such provider of services may also charge such individual or other person for such more expensive items or services to the extent that the amount customarily charged by it for the items or services furnished at such request exceeds the amount customarily charged

by it for the items or services with respect to which payment may be made under this subchapter.

(C) A provider of services may in accordance with its customary practice also appropriately charge any such individual for any whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished him with respect to which a deductible is imposed under section 1395e (a) (2) of this title, except that (i) any excess of such charge over the cost to such provider for the blood (or equivalent quantities of packed red blood cells, as so defined) shall be deducted from any payment to such provider under this subchapter, (ii) no such charge may be imposed for the cost of administration of such blood (or equivalent quantities of packed red blood cells, as so defined) and (iii) such charge may not be made to the extent such blood (or equivalent quantities of packed red blood cells, as so defined) has been replaced on behalf of such individual or arrangements have been made for its replacement on his behalf. For purposes of clause (iii) of the preceding sentence, whole blood (or equivalent quantities of packed red blood cells, as so defined) furnished an individual shall be deemed replaced when the provider of services is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is imposed under section 1395e(a)(2) of this title.

(b) An agreement with the Secretary under this section may be terminated—

(1) by the provider of services at such time and upon such notice to the Secretary and the public as may be provided in regulations, except that notice of more than 6 months shall not be required, or

(2) by the Secretary at such time and upon such reasonable notice to the provider of services and the public as may be specified in regulations, but only after the Secretary has determined (A) that such provider of services is not complying substantially with the provisions of such agreement, or with the provisions of this subchapter and regulations thereunder, or (B) that such provider of services no longer substantially meets the applicable provisions of section 1395x of this title, or (C) that such provider of services has failed to provide such information as the Secretary finds necessary to determine whether payments are or were due under this subchapter and the amounts thereof, or has refused to permit such examination of its fiscal and other records by or on behalf of the Secretary as may be necessary to verify such information.

Any termination shall be applicable—

(3) in the case of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services, with respect to such services furnished to any individual who is admitted to the hospital or extended care facility furnishing such services on or after the effective date of such termination,

(4) (A) with respect to home health services furnished to an individual under a plan therefor established on or after the effective date of such termination, or (B) if a plan is established before such effective date, with respect to such services furnished to such individual after the calendar year in which such termination is effective, and

(5) with respect to any other items and services furnished on or after the effective date of such termination.

(c) Where an agreement filed under this subchapter by a provider of services has been terminated by the Secretary, such provider may not file another agreement under this subchapter unless the Secretary finds that the reason for the termination has been removed and that there is reasonable assurance that it will not recur.

(d) If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1395x (k) of this title of long-stay cases in a hospital or extended care facility, he may, in lieu of terminating his agreement with such hospital or facility, decide that, with respect to any individual admitted to such hospital or facility after a subsequent date specified by him, no payment shall be made under this subchapter for inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) after the 20th day of a continuous period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, as the case may be. Such decision may be made effective only after such notice to the hospital, or (in the case of an extended care facility) to the facility and the hospital or hospitals with which it has a transfer agreement, and to the public, as may be prescribed by regulations, and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

(e) For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title, or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title, but only with respect to the furnishing of outpatient physical therapy services (as therein defined).

Aug. 14, 1935, c. 531, Title XVIII, § 1866, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 327, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, §§ 129(c), (12), 133(c), 135(b), 81 Stat. 849, 851, 852.

1968 Amendment. Subsec. (a) (2) (A). Pub.L. 90–248, § 129(c) (12) (A) (i), (ii), substituted "or (a) (3)" for ", (a) (2), or (a) (4)" in clause (i), and deleted "or, in the case of outpatient hospital diagnostic services, for which payment is made under part A" in clause (ii).

Subsec. (a) (2) (C). Pub.L. 90–248, § 129(c) (12) (B), substituted "1395e(a) (2)" for "1395e(a) (3)".

Subsec. (a) (2) (C). Pub.L. 90–248, § 135(b), authorized a provider of services to charge for blood in accordance with its customary practices, included, in addition to whole blood for which a provider of services may charge, equivalent quantities of packed red blood cells, and provided that blood furnished an individual will be deemed replaced when the provider is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells) furnished the individual to which the three pint deductible applies.

Subsec. (e). Pub.L. 90–248, § 133(c), added subsec. (e).

Effective Date of 1968 Amendment. Amendment of subsec. (a) (2) (A), (C) of this section by section 129(c) (12) (A), (B) of Pub.L. 90–248, applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub.L. 90–248 set out as a note under section 1395d of this title.

Amendment of subsec. (a) (2) (C) of this section by section 135(b) of Pub.L. 90–248, applicable with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967, see section 135(d) of Pub.L. 90–248 set out as a note under section 1395e of this title.

Subsec. (e) of this section applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248 set out as a note under section 1395k of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S.Code Cong. and Adm.News, p. 2834.

Index to Notes

1. Private insurance programs, liability of

Evidence established that when benefits received by insured under Medicare program were included in computation, insured was not entitled to payment under major medical expense provision of health and accident policy. Travelers Ins. Co. v. Varley, Tex.Civ.App.1967, 421 S.W.2d 478.

Where health and accident policy issued several years before establishment of Medicare obligated insurer to pay charges made by hospital to insured, insurer was liable for hospital expenses even though no demand for payment was made on insured by hospital and charges were paid by Medicare. Id.

Where miscellaneous fee section of health and accident policy provided for payment of "actual expense" to insured, insured was not entitled to recover under such provision for expenses which were paid under Medicare program. Id.

§ 1395dd. Health Insurance Benefits Advisory Council—Creation; composition; appointment of members; Chairman; representative activities and interests; terms of office; special advisory professional or technical committees; compensation and travel expenses; meetings

(a) There is hereby created a Health Insurance Benefits Advisory Council which shall consist of 19 persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of Title 5, governing appointments in the competitive service. The Secretary shall from time to time appoint one of the members to serve as Chairman. The members shall include persons who are outstanding in fields related to hospital, medical, and other health activities, persons who are representative of organizations and associations of professional personnel in the field of medicine, and at least one person who is representative of the general public. Each member shall hold office for a term of 4 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. A member shall not be eligible to serve continuously for more than 2 terms. The Secretary may, at the request of the Advisory Council or otherwise, appoint such special advisory professional or technical committees as may be useful in carrying out this subchapter. Members of the Advisory Council and members of any such advisory or technical committee, while attending meetings or conferences thereof or otherwise serving on business of the Advisory Council or of such committee, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently. The Advisory Council shall meet as frequently as the Secretary deems necessary. Upon request of 5 or more members, it shall be the duty of the Secretary to call a meeting of the Advisory Council.

Functions of Council; annual reports to Secretary and Congress

(b) It shall be the function of the Advisory Council (1) to advise the Secretary on matters of general policy in the administration of this subchapter and in the formulation of regulations under this subchapter, and (2) to study the utilization of hospital and other medical care and services for which payment may be made under this subchapter with a view to recommending any changes which may seem desirable in the way in which such care and services are utilized or in the administration of the programs established by this subchapter, or in the provisions of this subchapter. The Advisory Council shall make an annual report to the Secretary on the performance of its functions, including any recommendations it may have with respect thereto, and such report shall be transmitted promptly by the Secretary to the Congress.

Technical assistance; availability of assistance and data

(c) The Advisory Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Advisory Council such secretarial, clerical, and other assistance and such pertinent data obtained and prepared by the Department of Health, Education, and Welfare as the Advisory Council may require to carry out its functions.

Aug. 14, 1935, c. 531, Title XVIII, § 1867, as added July 30, 1965, Pub. L. 89–97, Title I, § 102(a), 79 Stat. 329, and amended Jan. 2, 1968, Pub. L. 90–248, Title I, § 164(a), 81 Stat. 873.

1968 Amendment. Subsec. (a). Pub.L. 90–248 designated existing provisions as subsec. (a), deleted subject matter now covered in subsec. (b) (1) of this section and respecting expiration of terms of office of members first taking office, as designated by the Secretary when appointed, four at end of first year, four at end of second year, four at end of third year, and four at end of fourth year after date of appointment, increased Council membership from 16 to 19 persons and

number of members required to call meetings from 4 to 5 persons, substituted provision for appointments without regard to provisions of Title 5, governing appointments in the competitive service for former provision to disregard the civil service laws and reference to section 5703 for section 73b—2 of Title 5, and provided for representation of organizations and associations of professional personnel in the field of medicine.

Subsec. (b). Pub.L. 90–248 incorporated existing provisions in cl. (1) and added cl. (2) making it a Council function to study and recommend changes in use of hospital and other medical care and services and requirement of annual reports to the Secretary and Congress.

Subsec. (c). Pub.L. 90–248 added subsec. (c).

Terms of Office; Expiration. Section 164(b) of Pub.L. 90–248 provided that: "The amendment made by subsection (a) [amending this section] shall not be construed as affecting the terms of office of the members of the Health Insurance Benefits Advisory Council in office on the date of the enactment of this Act [Jan. 2, 1968] or their successors. The terms of office of the three additional members of the Health Insurance Benefits Advisory Council first appointed pursuant to the increase in the membership of such Council provided by such amendment shall expire, as designated by the Secretary at the time of appointment, one at the end of the first year, one at the end of the second year, and one at the end of the third year after the date of appointment."

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1395ee. Repealed. Pub.L. 90–248, Title I, § 164(c), Jan. 2, 1968, 81 Stat. 874

Section, Act Aug. 14, 1935, c. 531, Title XVIII, § 1868, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 329, provided for creation of a National Medical Review Committee, functions of such Committee, including submission of annual reports to the Secretary and Congress, employment of technical assistance, and for availability of assistance and data, and is now covered by section 1395dd of this title.

§ 1395ff. Determinations; appeals

(a) The determination of whether an individual is entitled to benefits under part A or part B, and the determination of the amount of benefits under part A, shall be made by the Secretary in accordance with regulations prescribed by him.

(b) Any individual dissatisfied with any determination under subsection (a) of this section as to entitlement under part A or part B, or as to amount of benefits under part A where the matter in controversy is $100 or more, shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and, in the case of a determination as to entitlement or as to amount of benefits where the amount in controversy is $1,000 or more, to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.

(c) Any institution or agency dissatisfied with any determination by the Secretary that it is not a provider of services, or with any determination described in section 1395cc (b) (2) of this title, shall be entitled to a hearing thereon by the Secretary (after reasonable notice and opportunity for hearing) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title. Aug. 14, 1935, c. 531, Title XVIII, § 1869, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 330.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395gg. Overpayments on behalf of individuals and settlement of claims for benefits on behalf of deceased individuals

(a) Any payment under this subchapter to any provider of services or other person with respect to any items or services furnished any individual shall be regarded as a payment to such individual.

(b) Where—

(1) more than the correct amount is paid under this subchapter to a provider of services or other person for items or services furnished an individual and the Secretary determines that, within such period as he may specify, the excess over the correct amount cannot be recouped from such provider of services or other person, or

(2) any payment has been made under section 1395f(e) of this title to a provider of services or other person for items or services furnished an individual,

proper adjustments shall be made, under regulations prescribed (after consultation with the Railroad Retirement Board) by the Secretary, by decreasing subsequent payments—

(3) to which such individual is entitled under subchapter II of this chapter or under the Railroad Retirement Act of 1937, as the case may be, or

(4) if such individual dies before such adjustment has been completed, to which any other individual is entitled under subchapter II of this chapter or under the Railroad Retirement Act of 1937, as the case may be, with respect to the wages and self-employment income or the compensation constituting the basis of the benefits of such deceased individual under subchapter II of this chapter.

As soon as practicable after any adjustment under paragraph (3) or (4) is determined to be necessary, the Secretary, for purposes of this section, section 1395i (g) of this title, and section 1395t (f) of this title, shall certify (to the Railroad Retirement Board if the adjustment is to be made by decreasing subsequent payments under the Railroad Retirement Act of 1937) the amount of the overpayment as to which the adjustment is to be made.

(c) There shall be no adjustment as provided in subsection (b) (nor shall there be recovery) in any case where the incorrect payment has been made (including payments under section 1395f(e) of this title) with respect to an individual who is without fault and where such adjustment (or recovery) would defeat the purposes of subchapter II of this chapter or would be against equity and good conscience.

(d) No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person where the adjustment or recovery of such amount is waived under subsection (c) of this section or where adjustment under subsection (b) of this section is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

(e) If an individual, who received services for which payment may be made to such individual under this subchapter, dies and payment for such services was made (other than under this subchapter), and the individual died before any payment due him under this subchapter with respect to such services was completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) if the payment for such services was made (before or after such individual's death) by a person other than the deceased individual, to the person or persons determined by the Secretary under regulations to have paid for such services, or if the payment for such services was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any;

(2) if there is no person who meets the requirements of paragraph (1), to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who was either living in the same household with the deceased at the time of his death or was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if the person who meets such requirements dies before the payment due him under this subchapter is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employ-

ment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person, if any, determined by the Secretary to be the surviving spouse of the deceased individual;

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(8) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), (6), or (7), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the legal representatives of the estate of the deceased individual, if any.

(f) If an individual who received medical and other health services for which payment may be made under section 1395k(a) (1) of this title dies, and—

(1) no assignment of the right to payments was made by such individual before his death, and

(2) payment for such services has not been made,

payment for such services shall be made to the physician or other person who provided such services, but payment shall be made under this subsection only in such amount and subject to such conditions as would have been applicable if the individual who received the services had not died, and only if the person or persons who provided the services agrees that the reasonable charge is the full charge for the services.

Aug. 14, 1935, c. 531, Title XVIII, § 1870, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 331, and amended Jan. 2, 1968, Pub.L. 90–248, Title I, § 154(b), (c), 81 Stat. 862.

References in Text. The Railroad Retirement Act of 1937, referred to in subsec. (b) (3), (4), and last sentence, is classified to sections 228a to 228c—1, 228e–228h, and 228i to 228s—2 of Title 45, Railroads.

1968 Amendment. Pub.L. 90–248, § 154 (b), provided in the section catchline for the settlement of claims for benefits on behalf of deceased individuals.

Subsecs. (e), (f). Pub.L. 90–248, § 154 (c), added subsecs. (e) and (f).

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

§ 1395hh. Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this sub-

chapter. When used in this subchapter, the term "regulations" means unless the context otherwise requires, regulations prescribed by the Secretary. Aug. 14, 1935, c. 531, Title XVIII, § 1871, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 331.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1967 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395ii. Application of certain provisions of subchapter II

The provisions of sections 406, 408, and 416(j) of this title, and of subsections (a), (d), (e), (f), (h), (i), (j), (k), and (*l*) of section 405 of this title, shall also apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter. Aug. 14, 1935, c. 531, Title XVIII, § 1872, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 332.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395jj. Designation of organization or publication by name

Designation in this subchapter, by name, of any nongovernmental organization or publication shall not be affected by change of name of such organization or publication, and shall apply to any successor organization or publication which the Secretary finds serves the purpose for which such designation is made. Aug. 14, 1935, c. 531, Title XVIII, § 1873, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 332.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395kk. Administration

(a) Except as otherwise provided in this subchapter and in the Railroad Retirement Act of 1937, the insurance programs established by this subchapter shall be administered by the Secretary. The Secretary may perform any of his functions under this subchapter directly, or by contract providing for payment in advance or by way of reimbursement, and in such installments, as the Secretary may deem necessary.

(b) The Secretary may contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this subchapter. Aug. 14, 1935, c. 531, Title XVIII, § 1874, as added July 30, 1965, Pub.L. 89–97, Title I, § 102(a), 79 Stat. 332, and amended July 30, 1965, Pub.L. 89–97, Title I, § 111(a), 79 Stat. 340.

References in Text. The Railroad Retirement Act of 1937, referred to in subsec. (a), is classified to sections 228a to 228c—1, 228e–228h, and 228i to 228s—2 of Title 45, Railroads.

1965 Amendment. Subsec. (a). Pub.L. 89–97 inserted in the first sentence the reference to the Railroad Retirement Act of 1937.

Effective Date of 1965 Amendment. Amendment of this section by Pub.L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub.L. 89–97, set out as a note under section 228s—2 of Title 45, Railroads.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1395*ll*. Studies and recommendations

(a) The Secretary shall carry on studies and develop recommendations to be submitted from time to time to the Congress relating to health care of the aged, including studies and recommendations concerning (1) the adequacy of existing personnel and facilities for health care for purposes of the programs under parts A and B; (2) methods for encouraging the further development of efficient and economical forms of health care which are a constructive alternative to inpatient hospital care; and (3)

the effects of the deductibles and coinsurance provisions upon beneficiaries, persons who provide health services, and the financing of the program.

(b) The Secretary shall make a continuing study of the operation and administration of the insurance programs under parts A and B (including the experimentation authorized by section 1395b—1 of this title), and shall transmit to the Congress annually a report concerning the operation of such programs.

Aug. 14, 1935, c. 531, Title XVIII, § 1875, as added July 30, 1965, Pub. L. 89–97, Title I, § 102(a), 79 Stat. 332, and amended Jan. 2, 1968, Pub. L. 90–248, Title IV, § 402(c), 81 Stat. 931.

1968 Amendment. Subsec. (b). Pub.L. 90–248 inserted "(including the experimentation authorized by section 1395b—1 of this title)" after "under parts A and B".

Legislative History: For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 90–248, 1967 U.S. Code Cong. and Adm.News, p. 2834.

SUBCHAPTER XIX.—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS [New]

§ 1396. Appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or permanently and totally disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for medical assistance. Aug. 14, 1935, c. 531, Title XIX, § 1901, as added July 30, 1965, Pub.L. 89–97, Title I, § 121(a), 79 Stat. 343.

Legislative History: For legislative history and purpose for Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1396a. State plans for medical assistance—Contents

(a) A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1396b of this title are authorized by this subchapter; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel

in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(5) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under subchapter I or XVI of this chapter (insofar as it relates to the aged);

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan;

(8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services;

(10) provide for making medical assistance available to all individuals receiving aid or assistance under State plans approved under subchapter I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter; and—

(A) provide that the medical assistance made available to individuals receiving aid or assistance under any such State plan—

(i) shall not be less in amount, duration, or scope than the medical assistance made available to individuals receiving aid or assistance under any other such State plan, and

(ii) shall not be less in amount, duration, or scope than the medical or remedial care and services made available to individuals not receiving aid or assistance under any such plan; and

(B) if medical or remedial care and services are included for any group of individuals who are not receiving aid or assistance under any such State plan and who do not meet the income and resources requirements of the one of such State plans which is appropriate, as determined in accordance with standards prescribed by the Secretary, provide—

(i) for making medical or remedial care and services available to all individuals who would, if needy, be eligible for aid or assistance under any such State plan and who have insufficient (as determined in accordance with comparable standards) income and resources to meet the costs of necessary medical or remedial care and services, and

(ii) that the medical or remedial care and services made available to all individuals not receiving aid or assistance under any such State plan shall be equal in amount, duration, and scope;

except that (I) the making available of the services described in paragraph (4) or (14) of section 1396d (a) of this title to individuals meeting the age requirement prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, and (II) the making available of supplementary medical insurance benefits under part B of subchapter XVIII of this chapter to individuals eligible therefor (either pursuant to an agreement entered into under section 1395v of this title or by reason of the payment of premiums under such subchapter by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of the deductibles, cost sharing, or similar charges under part B of subchapter XVIII of this chapter for individuals eligible for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals;

(11) (A) provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan, and (B) effective July 1, 1969, provide, to the extent prescribed by the Secretary, for entering into agreements, with any agency, institution, or organization receiving payments for part or all of the cost of plans or projects under subchapter V of this chapter, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such plan or project under subchapter V of this chapter and which are included in the State plan approved under this section and (ii) making such provision as may be appropriate for reimbursing such agency, institution, or organization for the cost of any such care and services furnished any individual for which payment would otherwise be made to the State with respect to him under section 1396b of this title;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) provide—

(A) for inclusion of some institutional and some noninstitutional care and services, and

(B) in the case of individuals receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, for the inclusion of at least the care and services listed in clauses (1) through (5) of section 1396d(a) of this title, and

(C) in the case of individuals not included under subparagraph (B) for the inclusion of at least—

(i) the care and services listed in clauses (1) through (5) of section 1396d(a) of this title or

(ii) (I) the care and services listed in any 7 of the clauses numbered (1) through (14) of such section and (II) in the event the care and services provided under the State plan include hospital or skilled nursing home services, physicians' services to an individual in a hospital or skilled nursing home during any period he is receiving hospital services from such hospital or skilled nursing home services from such home, and

(D) for payment of the reasonable cost (as determined in accordance with standards approved by the Secretary and included in the plan) of inpatient hospital services provided under the plan;

(14) provide that (A) in the case of individuals receiving aid or assistance under State plans approved under subchapter I, X, XIV, XVI, and part A of subchapter IV of this chapter, no deduction, cost sharing, or similar charge will be imposed under the plan on the individual with respect to inpatient hospital services furnished him under the plan, and (B) any deduction, cost sharing, or similar charge imposed under the plan with respect to inpatient hospital services or any other medical assistance furnished to an individual thereunder, and any enrollment fee, premium, or similar charge imposed under the plan, shall be reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to the recipient's income or his income and resources;

(15) in the case of eligible individuals 65 years of age or older who are covered by either or both of the insurance programs established by subchapter XVIII of this chapter, provide where, under the plan, all of any deductible, cost sharing, or similar charge imposed with respect to such individual under the insurance program established by such subchapter is not met, the portion thereof which is met shall be determined on a basis reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to such individual's income or his income and resources;

(16) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of medical assistance under the plan to individuals who are residents of the State but are absent therefrom;

(17) include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, of this chapter, based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchapter, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, if he met the requirements as to need, be eligible for aid or assistance in the form of money payments under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter) as would not be disregarded (or set aside for future needs) in determining his eligibility for and amount of such aid or assistance under such plan, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or is blind or permanently and totally disabled; and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums or otherwise) incurred for medical care or for any other type of remedial care recognized under State law;

(18) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the plan (except pursuant to

the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age 21 or is blind or permanently and totally disabled) of any medical assistance correctly paid on behalf of such individual under the plan;

(19) provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients;

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodical determination of his need for continued treatment in the institution;

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 303(a) (4) (A) (i) and (ii) of this title or section 1383(a) (4) (A) (i) and (ii) of this title which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

(D) provide methods of determining the reasonable cost of institutional care for such patients;

(21) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases;

(22) include descriptions of (A) the kinds and numbers of professional medical personnel and supporting staff that will be used in the administration of the plan and of the responsibilities they will have, (B) the standards, for private or public institutions in which recipients of medical assistance under the plan may receive care or services, that will be utilized by the State authority or authorities responsible for establishing and maintaining such standards, (C) the cooperative arrangements with State health agencies and State voca-

tional rehabilitation agencies entered into with a view to maximum utilization of and coordination of the provision of medical assistance with the services administered or supervised by such agencies, and (D) other standards and methods that the State will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality;

(23) provide that any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services;

(24) effective July 1, 1969, provide for consultative services by health agencies and other appropriate agencies of the State to hospitals, nursing homes, home health agencies, clinics, laboratories, and such other institutions as the Secretary may specify in order to assist them (A) to qualify for payments under this chapter, (B) to establish and maintain such fiscal records as may be necessary for the proper and efficient administration of this chapter, and (C) to provide information needed to determine payments due under this chapter on account of care and services furnished to individuals;

(25) provide (A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties to pay for care and services (available under the plan) arising out of injury, disease, or disability, (B) that where the State or local agency knows that a third party has such a legal liability such agency will treat such legal liability as a resource of the individual on whose behalf the care and services are made available for purposes of paragraph (17) (B), and (C) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

(26) effective July 1, 1969, provide (A) for a regular program of medical review (including medical evaluation of each patient's need for skilled nursing home care) or (in the case of individuals who are eligible therefor under the State plan) need for care in a mental hospital, a written plan of care, and, where applicable, a plan of rehabilitation prior to admission to a skilled nursing home; (B) for periodic inspections to be made in all skilled nursing homes and mental institutions (if the State plan includes care in such institutions) within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel) of (i) the care being provided in such nursing homes (and mental institutions, if care therein is provided under the State plan) to persons receiving assistance under the State plan, (ii) with respect to each of the patients receiving such care, the adequacy of the services available in particular nursing homes (or institutions) to meet the current health needs and promote the maximum physical well-being of patients receiving care in such homes (or institutions), (iii) the necessity and desirability of the continued placement of such patients in such nursing homes (or institutions), and (iv) the feasibility of meeting their health care needs through alternative institutional or noninstitutional services; and (C) for the making by such team or teams of full and complete reports of the findings resulting from such inspections together with any recommendations to the State agency administering or supervising the administration of the State plan;

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiv-

ing assistance under the State plan, and (B) to furnish the State agency with such information, regarding any payments claimed by such person or institution for providing services under the State plan as the State agency may from time to time request;

(28) provide that any skilled nursing home receiving payments under such plan must—

(A) supply to the licensing agency of the State full and complete information as to the identity (i) of each person having (directly or indirectly) an ownership interest of 10 per centum or more in such nursing home, (ii) in case a nursing home is organized as a corporation, of each officer and director of the corporation, and (iii) in case a nursing home is organized as a partnership, of each partner; and promptly report any changes which would affect the current accuracy of the information so required to be supplied;

(B) have and maintain an organized nursing service for its patients, which is under the direction of a professional registered nurse who is employed full-time by such nursing home, and which is composed of sufficient nursing and auxiliary personnel to provide adequate and properly supervised nursing services for such patients during all hours of each day and all days of each week;

(C) make satisfactory arrangements for professional planning and supervision of menus and meal service for patients for whom special diets or dietary restrictions are medically prescribed;

(D) have satisfactory policies and procedures relating to the maintenance of medical records on each patient of the nursing home, dispensing and administering of drugs and biologicals, and assuring that each patient is under the care of a physician and that adequate provisions is made for medical attention to any patient during emergencies;

(E) have arrangements with one or more general hospitals under which such hospital or hospitals will provide needed diagnostic and other services to patients of such nursing home, and under which such hospital or hospitals agree to timely acceptance, as patients thereof, of acutely ill patients of such nursing home who are in need of hospital care; except that the State agency may waive this requirement wholly or in part with respect to any nursing home meeting all the other requirements and which, by reason of remote location or other good and sufficient reason, is unable to effect such an arrangement with a hospital; and

(F) (i) meet (after December 31, 1969) such provisions of the Life Safety Code of the National Fire Protection Association (21st Edition, 1967) as are applicable to nursing homes; except that the State agency may waive in accordance with regulations of the Secretary, for such periods as it deems appropriate, specific provisions of such code which, if rigidly applied, would result in unreasonable hardship upon a nursing home, but only if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that such waiver will not adversely affect the health and safety of the patients of such skilled nursing home; and except that the requirements set forth in the preceding provisions of this subclause, (i) shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in nursing homes; and (ii) meet conditions relating to environment and sanitation applicable to extended care facilities under subchapter XVIII of this chapter; except that the State agency may waive in accordance with regulations of the Secretary,

for such periods as it deems appropriate, any requirement imposed by the preceding provisions of this subclause (ii) if such agency finds that such requirement, if rigidly applied, would result in unreasonable hardship upon a nursing home, but only if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that such waiver will not adversely affect the health and safety of the patients of such nursing home;

(29) include a State program which meets the requirements set forth in section 1396g of this title, for the licensing of administrators of nursing homes;

(30) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments (including payments for any drugs provided under the plan) are not in excess of reasonable charges consistent with efficiency, economy, and quality of care.

* * * * * * * * * *

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under subchapter I of this chapter (or subchapter XVI of this chapter, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter (except for purposes of paragraph (10)).

Approval by Secretary

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan—

(1) an age requirement of more than 65 years; or

(2) effective July 1, 1967, any age requirement which excludes any individual who has not attained the age of 21 and is or would, except for the provisions of section 606(a) (2) of this title, be a dependent child under part A of subchapter IV of this chapter; or

(3) any residence requirement which excludes any individual who resides in the State; or

(4) any citizenship requirement which excludes any citizen of the United States.

Same; reduction of aid or assistance under State plans under other subchapters

(c) Notwithstanding subsection (b) of this section, the Secretary shall not approve any State plan for medical assistance if he determines that the approval and operation of the plan will result in a reduction in aid or assistance (other than so much of the aid or assistance as is provided for under the plan of the State approved under this subchapter) provided for

eligible individuals under a plan of such State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter.

Aug. 14, 1935, c. 531, Title XIX, § 1902, as added July 30, 1965, Pub.L. 89–97, Title I, § 121(a), 79 Stat. 344, and amended Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 210(a) (6), 223(a), 224(a), 227(a), 228(a), 229 (a), 231, 234(a), 235(a), 236(a), 237, 238, 241(f) (1)–(4), Title III, § 302(b), 81 Stat. 896, 901, 906, 908, 911, 917, 929.

1968 Amendment. Subsec. (a) (2). Pub. L. 90–248, § 231, changed the date on which State plans must meet certain financial participation requirements by substituting "July 1, 1969" for "July 1, 1970".

Subsec. (a) (4). Pub.L. 90–248, § 210(a) (6), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a) (10). Pub.L. 90–248, § 223 (a), designated existing provisions as item I and added item II.

Subsec. (a) (10). Pub.L. 90–248, § 241 (f) (1), deleted "IV," after "I," and inserted ", and part A of subchapter IV of this chapter" after "XVI of this chapter".

Subsec. (a) (11). Pub.L. 90–248, § 302 (b), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a) (13). Pub.L. 90–248, § 224 (a), designated existing provisions as subpar. (A), incorporated existing cl. (A) in provisions designated as subpars. (B) and (C) (i), making subpar. (B) and (C) applicable to individuals receiving aid or assistance under an approved State plan and to individuals not covered under subpar. (B), respectively, added cl. (ii) of subpar. (C), redesignated former cl. (B) as subpar. (D), and deleted effective date of July 1, 1967, for former cls. (A) and (B).

Subsec. (a) (14) (A). Pub.L. 90–248, § 235(a) (1), inserted "in the case of individuals receiving aid or assistance under State plans approved under subchapters I, X, XIV, XVI, and part A of subchapter IV of this chapter,".

Subsec. (a) (14) (B). Pub.L. 90–248. § 235(a) (2), inserted "inpatient hospital services or" after "respect to" and substituted "to an individual" for "him".

Subsec. (a) (15). Pub.L. 90–248, § 235 (a) (3), deleted subpar. (B) provision for meeting the full cost of any deductible imposed with respect to any such individual under the insurance program established by part A of such subchapter, deleted subpar. (B) designation preceding "where, under the plan", and substituted therein "established by such subchapter" for "established by part B of such subchapter".

Subsec. (a) (17). Pub.L. 90–248, § 238, inserted in the parenthetical expression "and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, based on the variations between shelter costs in urban areas and in rural areas" following "all groups".

Pub.L. 90–248, § 241(f) (2), in clause (B) deleted "IV." after "I." and inserted ", or part A of subchapter IV of this chapter" after "XVI of this chapter".

Subsecs. (a) (23)–(30). Pub.L. 90–248, §§ 227(a), 228(a), 229(a), 234(a), 236(a), 237, added pars. (23), (24), (25), (26)–(28), (29), (30), respectively.

Subsec. (b) (2). Pub.L. 90–248, § 241(f) (3), inserted "part A of" before "subchapter IV".

Subsec. (c). Pub.L. 90–248. § 241(f) (4), deleted "IV," after "I," and inserted ", or part A of subchapter IV of this chapter" after "XVI of this chapter".

Effective Date of 1968 Amendment. Amendment of subsec. (a) (4) by section 210(a) (6) of Pub.L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub.L. 90–248, set out as a note under section 302 of this title.

Section 223(b) of Pub.L. 90–248 provided that: "The amendments made by subsection (a) [to subsec. (a) (10) of this section] shall apply with respect to calendar quarters beginning after June 30, 1967."

Section 224(b) of Pub.L. 90–248 provided that: "The amendment made by subsection (a) [amending subsec. (a) (13) of this section] shall apply with respect to calendar quarters beginning after December 31, 1967."

Section 227(b) of Pub.L. 90–248 provided that: "The amendments made by this section [enacting subsec. (a) (23) of this section] shall apply with respect to calendar quarters beginning after June 30, 1969; except that such amendments shall apply in the case of Puerto Rico, the Virgin Islands, and Guam only with respect to calendar quarters beginning after June 30, 1972."

Section 229(b) of Pub.L. 90–248 provided that: "The amendment made by subsection (a) [enacting subsec. (a) (25) of this section] shall apply with respect to legal liabilities of third parties arising after March 31, 1968."

Section 234(b) of Pub.L. 90–248 provided that: "The amendments made by subsection (a) of this section [enacting subsecs. (a) (26)–(28) of this section] (unless otherwise specified in the body of such amendments) shall take effect on January 1, 1969."

Section 235(b) of Pub.L. 90–248 provided that: "The amendments made by subsection (a) [amending subsecs. (a) (14), (15) of this section] shall be effective in the case of calendar quarters beginning after December 31, 1967."

Enactment of subsec. (a) (29) by section 236(a) of Pub.L. 90–248 effective July 1, 1970, except as otherwise specified in the text thereof, see section 236(c) of Pub. L. 90–248, set out as a note under section 1396g of this title.

Section 237 of Pub.L. 90–248 provided in part that enactment of subsec. (a) (30) of this section by section 237 shall be effective Apr. 1, 1968.

Section 238 of Pub.L. 90–248 provided in part that amendment of subsec. (a) (17) of this section by section 238 shall be effective July 1, 1969.

Amendment of Subsec. (a) (13) (A) Effective in 1970. Section 224(c) of Pub.L. 90–248 provided that effective with respect to calendar quarters beginning after June 30, 1970, subsec. (a) (13) (A) of this section shall read as follows:

"(A) (i) for the inclusion of some institutional and some non-institutional care and services, and

"(ii) for the inclusion of home health services for any individual who, under the State plan, is entitled to skilled nursing home services, and".

Nursing Homes Eligible for Matching Funds for Home Services When Meeting State Licensure Requirements After June 30, 1968. Section 234(c) of Pub.L. 90–248 provided that: "Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act [subchapters I, X, XIV, XVI, or XIX of this chapter] for payments made to any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such home promptly takes all necessary steps to again meet such requirements."

District of Columbia; Plan for Medical Assistance. Pub.L. 90–227, § 1, Dec. 27, 1967, 81 Stat. 744, provided that:

(a) The Commissioner of the District of Columbia (hereafter in this Act [enacting this note and material set out as a note under section 1395v of this title] referred to as the 'Commissioner') may submit under title XIX of the Social Security Act [this subchapter] to the Secretary of Health, Education, and Welfare (hereafter in this Act referred to as the 'Secretary') a plan for medical assistance (and any modifications of such plan) to enable the District of Columbia to receive Federal financial assistance under such title for a medical assistance program established by the Commissioner under such plan.

"(b) (1) Notwithstanding any other provision of law, the Commissioner may take such action as may be necessary to submit such plan to the Secretary and to establish and carry out such medical assistance program, except that in prescribing the standards for determining eligibility for and the extent of medical assistance under the District of Columbia's plan for medical assistance, the Commissioner may not (except to the extent required by title XIX of the Social Security Act [this subchapter])—

"(A) prescribe maximum income levels for recipients of medical assistance under such plan which exceed (i) the title XIX maximum income levels if such levels are in effect, or (ii) the Commissioner's maximum income levels for the local medical assistance program if there are no title X maximum income levels in effect;

"(B) prescribe criteria which wou permit an individual or family to eligible for such assistance if s individual or family would be ineli ble, solely by reason of his or its sources, for medical assistance b under the plan of the State of Ma land approved under title XIX of Social Security Act [this subchapt and under the plan of the State Virginia approved under such ti

"(2) For purposes of subparagraph (of paragraph (1) of this subsection—

"(A) the term 'title XIX maximum come levels' means any maximum come levels which may be specif by title XIX of the Social Secur Act [this subchapter] for recipie of medical assistance under St plans approved under that title;

"(B) the term 'the Commissione maximum income levels for the lo medical assistance program' mea the maximum income levels p scribed for recipients of medical sistance under the District of Colu bia's medical assistance program effect in the fiscal year ending Ju 30, 1967; and

"(C) during any of the first four c endar quarters in which medical sistance is provided under such pl there shall be deemed to be no ti XIX maximum income levels in eff if the title XIX maximum inco levels in effect during such quar are higher than the Commissione maximum income levels for the lo medical assistance program."

Legislative History: For legislati history and purpose of Pub.L. 89– see 1965 U.S.Code Cong. and Adm.Ne p. 1943. See, also, Pub.L. 90–248, 1 U.S.Code Cong. and Adm.News, p. 2834

Index to Notes

1. Rules and regulations

Regulations pursuant to medical sistance program, popularly known Medi-Cal, by reducing minimum cov age for recipients of public assistance restricting physicians' services, witho eliminating the medically indigent, we invalid. Morris v. Williams, Cal.1967, 4 P.2d 697, 63 Cal.Rptr. 689.

§ 1396b. Payment to States—Computation of amount

(a) From the sums appropriated therefor, the Secretary (except otherwise provided in this section and section 1317 of this title) shall pa to each State which has a plan approved under this subchapter, for ea quarter, beginning with the quarter commencing January 1, 1966—

(1) an amount equal to the Federal medical assistance percen age (as defined in section 1396d(b) of this title) of the total amou expended during such quarter as medical assistance under the Sta plan (including expenditures for premiums under part B of subcha ter XVIII of this chapter, for individuals who are recipients of mon payments under a State plan approved under subchapter I, X, XI or XVI of this chapter, or part A of subchapter IV of this chapte and, except in the case of individuals sixty-five years of age or old who are not enrolled under part B of subchapter XVIII of this cha ter, other insurance premiums for medical or any other type of re edial care or the cost thereof; plus

(2) an amount equal to 75 percentum of so much of the sum expended during such quarter (as found necessary by the Secretar

for the proper and efficient administration of the State plan) as are attributable to compensation or training of skilled professional medical personnel, and staff directly supporting such personnel, of the State agency or any other public agency; plus

(3) an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

Quarterly expenditures to exceed average of total expenditures for each quarter of fiscal year ending June 30, 1965

(b) (1) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to individuals 65 years of age or older who are patients in institutions for mental diseases shall be paid only to the extent that the State makes a showing satisfactory to the Secretary that total expenditures from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection.

(2) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a) (1) of this section for any State for any quarter beginning after December 31, 1969, shall not take into account any amounts expended as medical assistance with respect to individuals aged 65 or over which would not have been so expended if the individuals involved had been enrolled in the insurance program established by part B of subchapter XVIII of this chapter.

Federal medical assistance percentage; Federal share of State medical expenses during fiscal year ending June 30, 1965

(c) (1) If the Secretary finds, on the basis of satisfactory information furnished by a State, that the Federal medical assistance percentage for such State applicable to any quarter in the period beginning January 1, 1966, and ending with the close of June 30, 1969, is less than 105 per centum of the Federal share of medical expenditures by the State during the fiscal year ending June 30, 1965 (as determined under paragraph (2)), then 105 per centum of such Federal share shall be the Federal medical assistance percentage (instead of the percentage determined under section 1396d (b) of this title) for such State for such quarter and each quarter thereafter occurring in such period and prior to the first quarter with respect to which such a finding is not applicable.

(2) For purposes of paragraph (1), the Federal share of medical expenditures by a State during the fiscal year ending June 30, 1965, means the percentage which the excess of—

(A) the total of the amounts determined under sections 303, 603, 1203, 1353, and 1383 of this title with respect to expenditures by such State during such year as aid or assistance under its State plans approved under subchapter I, IV, X, XIV, and XVI of this chapter, over

(B) the total of the amounts which would have been determined under such sections with respect to such expenditures during such year if expenditures as aid or assistance in the form of medical or any other type of remedial care had not been counted,

is of the total expenditures as aid or assistance in the form of medical or any other type of remedial care under such plans during such year.

Estimates of amount of State entitlement; installments; adjustments; overpayment; obligated appropriations

(d) (1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a), (b), and (c) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection. Expenditures for which payments were made to the State under subsection (a) of this section shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1396a(a) (25) of this title.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

Comprehensive care and services for eligible individuals by July 1, 1975

(e) The Secretary shall not make payments under the preceding provisions of this section to any State unless the State makes a satisfactory showing that it is making efforts in the direction of broadening the scope of the care and services made available under the plan and in the direction of liberalizing the eligibility requirements for medical assistance, with a view toward furnishing by July 1, 1975, comprehensive care and services to substantially all individuals who meet the plan's eligibility standards with respect to income and resources, including services to enable such individuals to attain or retain independence or self-care.

Limitation on Federal participation in medical assistance

(f) (1) (A) Except as provided in paragraph (4), payment under the preceding provisions of this section shall not be made with respect to any amount expended as medical assistance in a calendar quarter, in any State, for any member of a family the annual income of which exceeds the applicable income limitation determined under this paragraph.

(B) (i) Except as provided in clause (ii) of this subparagraph, the applicable income limitation with respect to any family is the amount determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133⅓ percent of the highest amount which would ordi-

narily be paid to a family of the same size without any income or resources, in the form of money payments, under the plan of the State approved under part A of subchapter IV of this chapter.

(ii) If the Secretary finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amount otherwise determined under clause (i) to take account of families of different sizes.

(C) The total amount of any applicable income limitation determined under subparagraph (B) shall, if it is not a multiple of $100 or such other amount as the Secretary may prescribe, be rounded to the next higher multiple of $100 or such other amount, as the case may be.

(2) In computing a family's income for purposes of paragraph (1), there shall be excluded any costs (whether in the form of insurance premiums or otherwise) incurred by such family for medical care or for any other type of remedial care recognized under State law.

(3) For purposes of paragraph (1) (B), in the case of a family consisting of only one individual, the "highest amount which would ordinarily be paid" to such family under the State's plan approved under part A of subchapter IV of this chapter shall be the amount determined by the State agency (on the basis of reasonable relationship to the amounts payable under such plan to families consisting of two or more persons) to be the amount of the aid which would ordinarily be payable under such plan to a family (without any income or resources) consisting of one person if such plan (without regard to section 608 of this title) provided for aid to such a family.

(4) The limitations on payment imposed by the preceding provisions of this subsection shall not apply with respect to any amount expended by a State as medical assistance for any individual who, at the time of the provision of the medical assistance giving rise to such expenditure—

(A) is a recipient of aid or assistance under a plan of such State which is approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, or

(B) is not a recipient of aid or assistance under such a plan but (i) is eligible to receive such aid or assistance, or (ii) would be eligible to receive such aid or assistance if he were not in a medical institution.

Aug. 14, 1935, c. 531, Title XIX, § 1903, as added July 30, 1965, Pub.L. 89–97, Title I, § 121(a), 79 Stat. 349, and amended Jan. 2, 1968, Pub.L. 90–248, Title II, §§ 220(a), 222(c), (d), 225(a), 229(c), 241(f) (5), 81 Stat. 898, 901, 902, 904, 917; June 28, 1968, Pub.L. 90–364, Title III, § 303(a) (1), 82 Stat. 274.

1968 Amendment. Subsec. (a) (1). Pub. L. 90–248, § 222(d), substituted "and, except in the case of individuals sixty-five years of age or older who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums" for "and other insurance premiums".

Pub.L. 90–248, § 241(f) (5), deleted "IV," after "I," and inserted "or part A of subchapter IV of this chapter," after "XVI of this chapter,".

Subsec. (a) (2). Pub.L. 90–248, § 225(a), substituted "of the State agency or any other public agency" for "of the State agency (or of the local agency administering the State plan in the political subdivision)".

Subsec. (b). Pub.L. 90–248, § 222(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (b) (2). Pub.L. 90–364 substituted "1969" for "1967".

Subsec. (d) (2). Pub.L. 90–248, § 229(c), provided for treatment of expenditures for which payments were made to the State under subsec. (a) as an overpayment to the extent that the State or local agency administering the plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1396a (a) (25) of this title.

Subsec. (f). Pub.L. 90–248, § 220(a), added subsec. (f).

Effective Date of 1968 Amendment. Section 220(b) of Pub.L. 90–248 provided that:

"(b) (1) In the case of any State whose plan under title XIX of the Social Security Act [this subchapter] is approved by the Secretary of Health, Education, and Welfare under section 1902 [section 1396a of this title] after July 25, 1967, the amendment made by subsection (a) [enacting subsec. (f) of this section] shall apply with respect to calendar quarters beginning after the date of enactment of this Act [Jan. 2, 1968].

"(2) In the case of any State whose plan under title XIX of the Social Security Act [this subchapter] was approved by the Secretary of Health, Education, and Welfare under section 1902 of the Social Security Act [section 1396a of this title] prior to July 26, 1967, the amendments made by subsection (a) [enacting subsec. (f) of this section] shall apply with respect to calendar quarters beginning after June 30, 1968, except that—

"(A) with respect to the third and fourth calendar quarters of 1968, such subsection shall be applied by substituting in subsection (f) of section 1903 of the Social Security Act [subsec. (f) of this section] 150 percent for 133⅓ percent each time such latter figure appears in such subsection (f), and

"(B) with respect to all calendar quarters during 1969, such subsection shall be applied by substituting in subsection (f) of section 1903 of such Act [subsec. (f) of this section] 140 percent for 133⅓ percent each time such latter figure appears in such subsection (f)."

Section 222(d) of Pub.L. 90–248, as amended by Pub.L. 90–364, Title III, § 303(a) (2), June 28, 1968, 82 Stat. 274, provided in part that amendment of subsec. (a) (1) of this section by such section 222(d) shall be effective with respect to calendar quarters beginning after Dec. 31, 1969.

Section 225(b) of Pub.L. 90–248 provided that: "The amendment made by subsection (a) [to subsec. (a) (2) of this section] shall apply with respect to expenditures made after December 31, 1967."

Section 303(b) of Pub.L. 90–364 provided that: "The amendments made by subsection (a) [amending subsec (b) (2) of this section] shall be effective with respect to calendar quarters beginning after December 31, 1967."

Exemption of Puerto Rico, the Virgin Islands, and Guam from Limitations on Federal Payments for Medical Assistance. Section 248(d) of Pub.L. 90–248 provided that: "The amendment made by section 220(a) of this Act [enacting subsec. (f) of this section] shall not apply in the case of Puerto Rico, the Virgin Islands, or Guam."

Nonduplication of Payments to States; Prohibition of Payments After Dec. 31, 1969. Section 121(b) of Pub.L. 89–97 provided that: "No payment may be made to any State under title [subchapter] I, IV, X, XIV, or XVI of the Social Security Act [this chapter] with respect to aid or assistance in the form of medical or any other type of remedial care for any period for which such State receives payments under title XIX of such Act [this subchapter], or for any period after December 31, 1969."

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834. See, also, Pub.L. 90–364, 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1396c. Operation of State plans

If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this subchapter, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1396a of this title; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure). Aug. 14, 1935, c. 531, Title XIX, § 1904, as added July 30, 1965, Pub.L. 89–97, Title I, § 121(a), 79 Stat. 351.

Legislative History. For legislative history and purpose of Pub.L. 89–97, see 1965 U.S.Code Cong. and Adm.News, p. 1943.

§ 1396d. Definitions—Medical assistance

For purposes of this subchapter—

(a) The term "medical assistance" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, who are—

(i) under the age of 21,

(ii) relatives specified in section 606(b) (1) of this title with whom a child is living if such child, except for section 606(a) (2) of this title, is (or would, if needy, be) a dependent child under part A of subchapter IV of this chapter,

(iii) 65 years or age or older,

(iv) blind,

(v) 18 years of age or older and permanently and totally disabled, or

(vi) persons essential (as described in the second sentence of this subsection) to individuals receiving aid or assistance under

State plans approved under subchapter I, X, XIV, or XVI of this chapter,

but whose income and resources are insufficient to meet all such cost—

(1) inpatient hospital services (other than services in an institution for tuberculosis or mental diseases);

(2) outpatient hospital services;

(3) other laboratory and X-ray services;

(4) (A) skilled nursing home services (other than services in an institution for tuberculosis or mental diseases) for individuals 21 years of age or older (B) effective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary;

(5) physicians' services, whether furnished in the office, the patient's home, a hospital, or a skilled nursing home, or elsewhere;

(6) medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law;

(7) home health care services;

(8) private duty nursing services;

(9) clinic services;

(10) dental services;

(11) physical therapy and related services;

(12) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(13) other diagnostic, screening, preventive, and rehabilitative services;

(14) inpatient hospital services and skilled nursing home services for individuals 65 years of age or over in an institution for tuberculosis or mental diseases; and

(15) any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary;

except that such term does not include—

(A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

For purposes of clauses (vi) of the preceding sentence, a person shall be considered essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XVI of this chapter), and such person is determined, under such a State plan, to be essential to the well being of such individual.

Federal medical assistance percentage; State percentage

(b) The term "Federal medical assistance percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, and (2) the Federal medical assistance percentage for Puerto

Rico, the Virgin Islands, and Guam shall be 50 per centum. The Federa medical assistance percentage for any State shall be determined and pro mulgated in accordance with the provisions of subparagraph (B) of sec tion 1301(a) (8) of this title; except that the Secretary shall promul gate such percentage as soon as possible after July 30, 1965, which pro mulgation shall be conclusive for each of the six quarters in the perio beginning January 1, 1966, and ending with the close of June 30, 1967. Aug. 14, 1935, c. 531, Title XIX, § 1905, as added July 30, 1965, Pub.L 89–97, Title I, § 121(a), 79 Stat. 351, and amended Jan. 2, 1968, Pub.L 90–248, Title II, §§ 230, 233, 241(f) (6), 248(c), Title III, § 302(a) 81 Stat. 905, 917, 919, 929.

1968 Amendment. Subsec. (a). Pub.L. 90–248, § 230, inserted after "for individuals" in the text preceding cl. (i) ", and with respect to physicians' or dentists' services, at the option of the State, to individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter."

Pub.L. 90–248, § 233(b), added provision deeming, for purposes of cl. (vi) of the preceding sentence, a person as essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XV of this chapter, and such person is determined, under such a State plan, to be essential to the well being of such individual.

Subsec. (a) (ii). Pub.L. 90–248, § 241(f (6), inserted "part A of" before "sub chapter IV".

Subsec. (a) (vi). Pub.L. 90–248, § 23 (a), added cl. (vi).

Subsec. (a) (4). Pub.L. 90–248, § 302(a designated existing provisions as cl. (A and added cl. (B).

Subsec. (b). Pub.L. 90–248, § 248(e substituted in clause (2) of first sentenc "50" for "55".

Effective Date of 1968 Amendmen Section 248(e) of Pub.L. 90–248 provide in part that amendment of subsec. (b) c this section by such section 248(e) sha be effective with respect to quarters afte 1967.

Legislative History: For legislativ history and purpose of Pub.L. 89–9 see 1965 U.S.Code Cong. and Adm.News p. 1943. See, also, Pub.L. 90–248, 196 U.S.Code Cong. and Adm.News, p. 2834.

§ 1396e. Advisory Council on Medical Assistance; creation; com position; appointment of members; Chairman; representative activitie and interests; majority representation of consumers; terms of office special advisory professional or technical committees; compensation an travel expenses; meetings

For the purpose of advising the Secretary on matters of general polic in the administration of this subchapter (including the relationship o this subchapter and subchapter XVIII of this chapter) and making recom mendations for improvements in such administration, there is hereb created a Medical Assistance Advisory Council which shall consist o twenty-one persons, not otherwise in the employ of the United States appointed by the Secretary without regard to the provisions of Title governing appointments in the competitive service. The Secretary shal from time to time appoint one of the members to serve as Chairman The members shall include representatives of State and local agencie and nongovernmental organizations and groups concerned with health and of consumers of health services, and a majority of the member ship of the Advisory Council shall consist of representatives of consume of health services. Each member shall hold office for a term of fou years, except that any member appointed to fill a vacancy occurring prio to the expiration of the term for which his predecessor was appointe shall be appointed for the remainder of such term, and except that th terms of office of the members first taking office shall expire, as desig nated by the Secretary at the time of appointment, five at the end of th first year, five at the end of the second year, five at the end of the third year, and six at the end of the fourth year after the date of appointment A member shall not be eligible to serve continuously for more than tw terms. The Secretary may, at the request of the Council or otherwise appoint such special advisory professional or technical committees as may be useful in carrying out this subchapter. Members of the Advisory Coun cil and members of any such advisory or technical committee, while at tending meetings or conferences thereof or otherwise serving on business of the Advisory Council or of such committee, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per

lay, including travel time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently. The Advisory Council shall meet as frequently as the Secretary deems necessary. Upon request of five or more members, it shall be the duty of the Secretary to call a meeting of the Advisory Council."

Aug. 14, 1935, c. 531, Title XIX, § 1906, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 226, 81 Stat. 903.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 1396f. Observance of religious beliefs

Nothing in this subchapter shall be construed to require any State which has a plan approved under this subchapter to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

Aug. 14, 1935, c. 531, Title XIX, § 1907, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 232, 81 Stat. 905.

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. 2834.

§ 1396g. State programs for licensing of administrators of nursing homes—Nature of State program

(a) For purposes of section 1396a(a)(29) of this title, a "State program for the licensing of administrators of nursing homes" is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section.

Licensing by State agency or board representative of concerned professions and institutions

(b) Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this section.

Functions and duties of State agency or board

(c) It shall be the function and duty of such agency or board to—

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure tha individuals licensed as nursing home administrators will, during an period that they serve as such, comply with the requirements of suc standards;

(5) receive, investigate, and take appropriate action with respec to, any charge or complaint filed with the board to the effect that an individual licensed as a nursing home administrator has failed t comply with the requirements of such standards; and

(6) conduct a continuing study and investigation of nursing home and administrators of nursing homes within the State with a viev to the improvement of the standards imposed for the licensing o such administrators and of procedures and methods for the enforce ment of such standards with respect to administrators of nursin homes who have been licensed as such.

Waiver of standards other than good character or suitability standards

(d) No State shall be considered to have failed to comply with th provisions of section 1396a(a)(29) of this title because the agency o board of such State (established pursuant to subsection (b) of this sec tion) shall have granted any waiver, with respect to any individual wh during all of the calendar year immediately preceding the calendar yea in which the requirements prescribed in section 1396a(a)(29) of this titl are first met by the State, has served as a nursing home administrator of any of the standards developed, imposed, and enforced by such boar pursuant to subsection (b)(1) other than such standards as relate t good character or suitability if—

(1) such waiver is for a period which ends after being in effec for two years or on June 30, 1972, whichever is earlier, and

(2) there is provided in the State (during all of the period fo which waiver is in effect), a program of training and instructio designed to enable all individuals, with respect to whom any such waiver is granted, to attain the qualifications necessary in order t meet such standards.

Authorization of appropriations; limitation of grants

(e) (1) There are hereby authorized to be appropriated for fiscal yea 1968 and the four succeeding fiscal years such sums as may be necessary to enable the Secretary to make grants to States for the purpose of assisting them in instituting and conducting programs of training and instruction of the type referred to in subsection (d)(2) of this section.

(2) No grant with respect to any such program shall exceed 75 per centum of the reasonable and necessary cost, as determined by the Secretary, of instituting and conducting such program.

National Advisory Council on Nursing Home Administration; creation; composition; appointment of members; Chairman; representation of interests; functions and duties; compensation and travel expenses; technical assistance; availability of assistance and data; termination date

(f)(1) For the purpose of advising the Secretary and the States in carrying out the provisions of this section, there is hereby created a National Advisory Council on Nursing Home Administration which shall consist of nine persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of Title 5 governing appointments in the competitive service. The Secretary shall from time to time appoint one of the members to serve as Chairman. The members shall include, but not be limited to, representatives of State health officers, State welfare directors, nursing home administrators, and university programs in public health or medical care administration.

(2) In addition to the function stated in paragraph (1) of this subsection, it shall be the function and duty of the Council (A) to study and identify the core of knowledge that should constitute minimally the train-

ng in the field of institutional administration which should qualify an ndividual to serve as a nursing home administrator; (B) to study and dentify the experience in the field of institutional administration that a nursing home administrator should be required to possess; (C) to study and develop model techniques for determining whether an individual possesses such qualifications; (D) to study and develop model criteria for granting waivers under the provisions of subsection (d) of this section; (E) to study and develop suggested programs of training referred to in subsection (d) of this section; (F) to study, develop, and recommend programs of training and instruction for those desiring to pursue a career n nursing home administration; (G) to complete the functions in (A) hrough (E) above by July 1, 1969, and submit a written report to the Secretary which report shall be submitted to the States to assist them in carrying out the provisions of this section.

(3) Members of the Council, while attending meetings or conferences thereof or otherwise serving on business of the Council shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently.

(4) The Secretary may at the request of the Council engage such technical assistance as may be required to carry out its functions; and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data obtained and prepared by the Department of Health, Education, and Welfare as the Council may require to carry out its functions.

(5) The Council shall be appointed by the Secretary prior to July 1, 1968, and shall cease to exist as of December 31, 1971.

Definitions

(g) As used in this section, the term—

(1) "nursing home" means any institution or facility defined as such for licensing purposes under State law, or, if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary; and

(2) "nursing home administrator" means any individual who is charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.

Aug. 14, 1935, c. 531, Title XIX, § 1908, as added Jan. 2, 1968, Pub.L. 90–248, Title II, § 236(b), 81 Stat. 908.

Effective Date. Section 236(c) of Pub.L. 90–248 provided that: "Except as otherwise specified in the text thereof [enacting this section and subsec. (a) (29) of section 1396a of this title] the amendments made by this section shall take effect on July 1, 1970."

Legislative History: For legislative history and purpose of Pub.L. 90–248, see 1967 U.S.Code Cong. and Adm.News, p. p. 2834.

CHAPTER 7A.—TEMPORARY UNEMPLOYMENT COMPENSATION PROGRAM

§ 1400m. Payment of compensation

Index to Notes

1. Determination of coverage

An employee who at age 62 was involuntarily separated from state service as result of bureau reorganization, whose retirement was not then mandatory, who received unemployment insurance benefits for 26 weeks and who received his retirement allowance from New York State Retirement System when benefits were exhausted was not entitled to extended benefits under this section. Riley v. Catherwood, A.D.1965, 265 N.Y.S.2d 391.

§ 1400s. False statements or representations; penalties; recovery of overpayments

Index to Notes

2. Particular statements

Defendant did not make false statements on claim forms in order to obtain benefits under this subchapter when he answered "No" to the question "During the week claimed * * * did you work or earn wages of any kind?", notwithstanding that during the period he had received payments for certain days of service as an Air Force reserve officer. U. S. v. Robbins, C.A.N.Y.1965, 354 F.2d 741.

CHAPTER 8.—LOW-RENT HOUSING

§ 1401. Declaration of policy

It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban, rural nonfarm, and Indian areas, that are injurious to the health, safety, and morals of the citizens of the Nation. In the development of low-rent housing it shall be the policy of the United States to make adequate provision for larger families and for families consisting of elderly persons. It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the Authority), with due consideration to accomplishing the objectives of this chapter while effecting economies.

As amended Aug. 1, 1968, Pub.L. 90–448, Title II, § 206(a), 82 Stat. 504.

1968 Amendment. Pub.L. 90–448 included families of low income in Indian areas.

Legislative History: For legislative history and purpose of Pub.L. 90–448, see 1968 U.S.Code Cong. and Adm.News, p. —.

3. Generally

Federal authorities have general statutory power to make such rules and regulations as may be necessary to carry out federal programs for assistance to low rent public housing projects. Thorpe v. Housing Authority of City of Durham, N.C.1967, 87 S.Ct. 1244, 386 U.S. 670, 18 L.Ed.2d 394, on remand 157 S.E.2d 147, 271 N.C. 468.

§ 1402. Definitions

When used in this chapter—

Low-rent housing; eligibility; continued occupancy

(1) The term "low-rent housing" means decent, safe, and sanitary dwellings within the financial reach of families of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing shall be available solely for families of low income.

Except as otherwise provided in section 1421b of this title, income limits for occupancy and rents shall be fixed by the public housing agency

and approved by the Authority after taking into consideration (A) the family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the family, and (B) the economic factors which affect the financial stability and solvency of the project.

(2) The term "families of low income" means families (including elderly and displaced families) who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use. The term "families" includes families consisting of a single person in the case of elderly families and displaced families, and includes the remaining member of a tenant family. The term "elderly families" means families whose heads (or their spouses), or whose sole members, have attained the age at which an individual may elect to receive an old-age benefit under title II of the Social Security Act, or are under a disability as defined in section 423 of this Title, or are handicapped within the meaning of section 1701q of Title 12. The term "displaced families" means families displaced by urban renewal or other governmental action, or families whose present or former dwellings are situated in areas determined by the Small Business Administration, subsequent to April 1, 1965, to have been affected by a natural disaster, and which have been extensively damaged or destroyed as the result of such disaster. The term "large families" means families which include four or more minors. The term "families of unusually low income" means families with incomes below the income level established by the public housing agency, as approved by the Authority, who could not be housed without the additional subsidy authorized under section 1410(a) of this title.

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Development; office space for renewal functions

(5) The term "development" means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-rent housing project. The term "development cost" shall comprise the costs incurred by a public housing agency in such undertakings and their necessary financing (including the payment of carrying charges, but not beyond the point of physical completion), and in otherwise carrying out the development of such project. Construction activity in connection with a low-rent housing project may be confined to the reconstruction, remodeling, or repair of existing buildings. In cases where the public housing agency is also the local public agency for the purposes of sections 1450–1452, 1453–1455, 1456–1460, and 1462 of this title, or in cases where the public housing agency and the local public agency for purposes of such sections operate under a combined central administrative office staff, an administration building included in a low-rent housing project to provide central administrative office facilities may also include sufficient facilities for the administration of the functions of such local public agency, and in such case, the Authority shall require that an economic rent shall be charged for the facilities in such building which are used for the administration of the functions of such local public agency and shall be paid from funds derived from sources other than the low-rent housing projects of such public housing agency.

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Federal project

(7) The term "Federal project" means any project owned or administered by the Authority.

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Public housing agency

(11) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (excluding the Authority), which is authorized to engage in the development or

administration of low-rent housing or slum clearance. The Authority shall enter into contracts for financial assistance with a State or State agency where such State or State agency makes application for such assistance for an eligible project which, under the applicable laws of the State, is to be developed and administered by such State or State agency.

* * * * * * * * * *

Authority

(13) The term "Authority" means the United States Housing Authority created by section 1403 of this title.

Initiated

(14) The term "initiated" when used in reference to the date on which a project was initiated refers to the date of the first contract for financial assistance in respect to such project entered into by the Authority and the public housing agency.

As amended Aug. 10, 1965, Pub.L. 89–117, Title I, §§ 103(b), 104, 79 Stat. 457; Aug. 1, 1968, Pub.L. 90–448, Title II, § 209(a), 82 Stat. 505.

1968 Amendment. Par. (2). Pub.L. 90–448 inserted the definitions of "large families" and "families of unusually low income."

1965 Amendment. Par. (1). Pub.L. 89–117, § 103(b), substituted "Except as otherwise provided in section 1421b of this title, income limits for occupancy and rents" for "Income limits for occupancy and rents."

Par. (2). Pub.L. 89–117, § 104, substituted "and includes the remaining member of a tenant family" for "and includes a single person who is handicapped within the meaning of section 1701q of Title 12 or who is the remaining member of a tenant family", inserted "or are handicapped within the meaning of section 1701q of Title 12", and included families whose present or former dwellings are situated in areas affected by a natural disaster, and which have been extensively damaged or destroyed as the result of such disaster within the term "displaced families".

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also Pub.L. 90–448, 1968 U.S. Code Cong. and Adm.News, p. —.

§ 1403. United States Housing Authority

There is hereby created in the Department of Housing and Urban Development the United States Housing Authority, which shall be an agency and instrumentality of the United States. The functions, powers, and duties of the Authority are vested in and shall be exercised by the Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary"). No officer or employee of the Department of Housing and Urban Development, in the performance of any such functions, powers, or duties, shall participate in any matter affecting his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested.

Sept. 1, 1937, c. 896, § 3, 50 Stat. 889, amended May 25, 1967, Pub.L. 90–19, § 2(b), 81 Stat. 20; Aug. 1, 1968, Pub.L. 90–448, Title XVII, § 1719(a), 82 Stat. 610.

1968 Amendment. Pub.L. 90–448 eliminated provisions which made the United States Housing Authority a body corporate with perpetual duration.

1967 Amendment. Pub.L. 90–19 incorporated in the three sentences of this section former subsecs. (a)–(c), relocating the Housing Authority in the Department of Housing and Urban Development from the Department of the Interior and the general supervision of its Secretary, vesting the powers in the Secretary of Housing and Urban Development rather than in an Administrator appointed by the President with Senate approval, and eliminating provisions from former subsec. (b) relating to term of office and removal for neglect of duty or malfeasance and former subsec. (c) prescribing salary of $10,000 a year for the Administrator permitting reappointment to office, and restricting other business, vocation, or employment.

1947 Reorganization Plan No. 3. Act Aug. 10, 1948, c. 832, Title V, § 501(a), 62 Stat. 1283, which amended 1947 Reorg. Plan No. 3, was repealed by Pub.L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 655.

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194. See, also, Pub.L. 90–448, 1968 U.S. Code Cong. and Adm.News, p. —.

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Public Housing Administration 4

4. Public Housing Administration

All the functions, powers and duties of Federal Works Administrator under the Lenham Act, section 1401 et seq. of this title, relating to defense housing were transferred by Ex.Ord. No. 9070, set out as note under former section 601 of Title 50 App. to Federal Public Housing Authority, and thereafter by Reorg. Plan

No. 3 of 1947, set out as note under this section, to the Public Housing Administration under Housing and Home Finance Agency. Breen v. Housing Authority of City of Pittsburgh, D.C.Pa.1954, 119 F.Supp. 320.

The Public Housing Administration and Housing and Home Finance Agency are administrative arms of the federal government and have no identity separate and distinct from the government, being merely unincorporated agencies carrying out governmental functions. Id.

Under reorganization plan transferring to the Public Housing Administration functions of the National Housing Agency with respect to non-farm housing projects including Greendale Project at Milwaukee, Wis., and under Ex.Ord.No. 9070 as amended, set out as note under former section 601 of Title 50 App. transferring authority over that project to the National Housing Agency from the Resettlement Administration, Public Housing Administration was vested with control and administration of Greendale Project including leases. U. S. v. Greendale Co-op. Ass'n, D.C.Wis.1948, 79 F.Supp. 536.

Regional director of Public Housing Administration had authority to execute notice to terminate lease of public housing project under delegations of authority to regional office officials and area officials. U. S. v. Greendale Co-op. Id.

Community manager of Greendale Housing Project owned and operated by United States at Milwaukee, Wis., had authority to execute notice terminating lease of project on behalf of Public Housing Administration under delegations of authority to field project personnel. Id.

§ 1404. Powers of Secretary; transfer of property—Assistance of officers and agencies

(a) The Secretary may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, equipment, and information of any agency of the Federal, State, or local governments as he finds helpful in the performance of the duties of the Authority. In connection with the utilization of such services, the Authority may make reasonable payments for necessary traveling and other expenses.

Transfer of property to Secretary

(b) The President may at any time in his discretion transfer to the Authority any right, interest, or title held by any department or agency of the Federal Government in any housing or slum-clearance projects (constructed or in process of construction on September 1, 1937), any assets, contracts, records, libraries, research materials, and other property held in connection with any such housing or slum-clearance projects or activities, any unexpended balance of funds allocated to such department or agency for the development, administration, or assistance of any housing or slum-clearance projects or activities, and any employees who have been engaged in work connected with housing or slum clearance. The Authority may continue any or all activities undertaken in connection with projects so transferred, subject to the provisions of this chapter.

As amended May 25, 1967, Pub.L. 90–19, § 2(a), (c), 81 Stat. 19, 20.

1967 Amendment. Subsec. (a). Pub.L. 90–19, § 2(a), (c), subsituted "Secretary" for "Administrator", redesignated former subsec. (c) as (a) and struck out former subsec. (a) authorization for appointments and compensation of necessary employees subject to civil-service and classification laws and for appointment of necessary officers, attorneys, experts, and employees compensated in excess of $1,980 per annum without regard to the civil-service laws.

Subsec. (b). Pub.L. 90–19, § 2(c), redesignated former subsec. (d) as (b) and struck out former subsec. (b) requiring confirmation by the Senate of appointments to positions the annual salary of which exceeded $7,500 per annum.

Subsecs. (c), (d). Pub.L. 90–19, § 2(c), redesignated former subsecs. (c) and (d) as (a) and (b), respectively.

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

§ 1404a. Same; right to sue; expenses

The United States Housing Authority may sue and be sued only with respect to its functions under this chapter, and sections 1501–1505 of this title. Funds made available for carrying out the functions, powers, and duties of the Authority (including appropriations therefor, which are authorized) shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Authority. Notwithstanding any other provisions of law except provisions of law enacted after August 10, 1948 expressly in

limitation hereof, the United States Housing Authority, or any State o local public agency administering a low-rent housing project assiste pursuant to this chapter or sections 1501–1505 of this title, shall con tinue to have the right to maintain an action or proceeding to recover pos session of any housing accommodations operated by it where such actio is authorized by the statute or regulations under which such housin accommodations are administered, and, in determining net income fo the purposes of tenant eligibility with respect to low-rent housin projects assisted pursuant to this chapter and sections 1501–1505 o this title, the United States Housing Authority is authorized, where i finds such action equitable and in the public interest, to exclude amount or portions thereof paid by the United States Government for disabilit or death occurring in connection with military service,

As amended May 25, 1967, Pub.L. 90–19, § 5(d) (4)–(7), 81 Stat. 21

1967 Amendment. Pub.L. 90–19, substituted "United States Housing Authority" for "Public Housing Administration" wherever appearing in first and fourth sentences, "Authority" for "Administration" wherever appearing in third sentence, and "may sue" for "shall sue" in the first sentence, and struck out former second sentence authorizing the Public Housing Commissioner to appoint necessary officers an employees subject to the civil-service an classification laws, to delegate his func tions and powers, and to make rules an regulations, respectively.

Legislative History: For legislative his tory and purpose of Pub.L. 90–19, see 196 U.S.Code Cong. and Adm.News, p. 119

§ 1405. Same; miscellaneous provisions—Location of offices

(a) The principal office of the Authority shall be in the District o Columbia, but it may establish branch offices or agencies in any State and may exercise any of its powers at any place within the United States The Authority may, by one or more of its officers or employees or b such agents or agencies as it may designate, conduct hearings or negoti ations at any place.

Suits By or Against

(b) The Authority may sue and be sued in its own name, and shal be represented in all litigated matters by the Attorney General or suc attorney or attorneys as he may designate.

Mail franchise

(c) The Authority shall be granted the free use of the mails in the sam manner as the executive departments of the Government.

Exemption from taxation

(d) The Authority, including but not limited to its franchise, capital reserves, surplus, loans, income, assets, and property of any kind, shal be exempt from all taxation now or hereafter imposed by the Unite States or by any State, county, municipality, or local taxing authority Obligations, including interest thereon, issued by public housing agencie in connection with low-rent-housing or slum-clearance projects, and th income derived by such agencies from such projects, shall be exempt from all taxation now or hereafter imposed by the United States.

As amended May 25, 1967, Pub.L. 90–19, § 2(d), (e), 81 Stat. 20.

1967 Amendment. Subsec. (b). Pub.L. 90–19, § 2(d), substituted "may sue" for "shall sue".

Subsecs. (c)–(e). Pub.L. 90–19, § 2(e), struck out former subsec. (c) providing for official seal and redesignated forme subsecs. (d) and (e) as (c) and (d).

Legislative History: For legislative his tory and purpose of Pub.L. 90–19 see 196 U.C.Code Cong. and Adm.News, p. 1194.

§ 1406. Same; financial provisions—Administrative expenditures; sales and loans; audit

(a) The Authority may make such expenditures, subject to audit under the general law, for the acquisition and maintenance of adequate administrative agencies, offices, vehicles, furnishings, equipment, supplies books, periodicals, printing and binding, for attendance at meetings, fo any necessary traveling expenses within the United States, its Territories dependencies, or possessions, and for such other expenses as may from

ime to time be found necessary for the proper administration of this hapter. Such financial transactions of the Authority as the making of loans, annual contributions, and capital grants, and the acquisition, sale, exchange, lease, or other disposition of real and personal property, and vouchers approved by the Secretary in connection with such financial transactions, shall be final and conclusive upon all officers of the Government; except that all such financial transactions of the Authority shall be audited by the General Accounting Office at such times and in such manner as the Comptroller General of the United States may by regulation prescribe.

* * * * * * * * * *

Presidential approval of annual contracts, etc.

(d) No annual contribution, grant, or loan, and no contract for any annual contribution, grant, or loan, under this chapter, shall be undertaken by the Authority except with the approval of the President.

As amended May 25, 1967, Pub.L. 90–19, § 2(a), 81 Stat. 19.

1967 Amendment. Subsec. (a). Pub.L. 90–19 substituted "Secretary" for "Administrator"

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

§ 1407. Same; information; annual report—Publication of information

(a) The Authority may publish and disseminate information pertinent to the various aspects of housing.

Contents of annual report to Congress

(b) The annual report of the Secretary to the President for submission to the Congress on the operations of the Department of Housing and Urban Development shall include a report on the operations and expenses of the Authority, including loans, contributions, and grants made or contracted for, low-rent housing and slum clearance projects undertaken, and the assets and liabilities of the Authority. Such report shall include operating statements of all projects under the jurisdiction of or receiving the assistance of the Authority, including summaries of the incomes of occupants, sizes of families, rentals, and other related information.

As amended May 25, 1967, Pub.L. 90–19, § 2(f), 81 Stat. 20.

1967 Amendment. Subsec. (b). Pub.L. 90–19 substituted "Secretary" and "Department of Housing and Urban Development" for "Housing and Home Finance Administrator" and "Housing and Home Finance Agency", respectively.

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

§ 1408. Same; rules and regulations

The Authority may from time to time make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this chapter.

Sept. 1, 1937, c. 896, § 8, 50 Stat. 891.

Index to Notes

½. Generally

Federal authorities have general statutory power to make such rules and regulations as may be necessary to carry out federal programs for assistance to low rent public housing projects. Thorpe v. Housing Authority of City of Durham, N.C.1967, 87 S.Ct. 1244, 386 U.S. 670, 18 L.Ed.2d 394, on remand 157 S.E.2d 147, 271 N.C. 468.

2. Eviction of tenants

In view of issuance, after certiorari was granted, of Department of Housing and Urban Development circular directing that no public housing project tenant be given notice to vacate without being told reasons for eviction and given opportunity to reply or explain, judgment of the North Carolina Supreme Court upholding summary ejectment of a tenant who was evicted without explanation was vacated and case was remanded for such further proceedings as might be appropriate in light of the circular. Thorpe v. Housing Authority of City of Durham, N.C.1967, 87 S.Ct. 1244, 386 U.S. 670, 18 L.Ed.2d 394, on remand, 157 S.E.2d 147, 271 N.C. 468.

§ 1409. Loans for low-rent-housing and slum-clearance projects

The Authority may make loans to public-housing agencies to assis the development, acquisition, or administration of low-rent-housing c slum-clearance projects by such agencies. Where capital grants ar made pursuant to section 1411 of this title the total amount of such loan outstanding on any one project and in which the Authority participate shall not exceed the development or acquisition cost of such project les all such capital grants, but in no event shall said loans exceed 90 pe centum of such cost. In the case of annual contributions in assistance c low rentals as provided in section 1410 of this title the total of such loan outstanding on any one project and in which the Authority participate shall not exceed 90 per centum of the development or acquisition cos of such project. Such loans shall bear interest at such rate not les than the applicable going Federal rate, plus one-half of one per centum shall be secured in such manner, and shall be repaid within such perio not exceeding sixty years, as may be deemed advisable by the Authority *Provided*, That in the case of projects initiated after March 1, 194 with respect to which annual contributions are contracted for pursuan to this chapter, loans shall not be made for a period exceeding fort years from the date of the bonds evidencing the loan: *And provide further*, That, in the case of such projects or any other projects wit respect to which the contracts (including contracts which amend c supersede contracts previously made) provide for loans for a period nc exceeding forty years from the date of the bonds evidencing the loa and for annual contributions for a period not exceeding forty yea from the date the first annual contribution for the project is paid, suc loans shall bear interest at a rate not less than the applicable goin Federal rate. Sept. 1, 1937, c. 896, § 9, 50 Stat. 891; July 15, 194 c. 338, Title III, § 304(c), (d), 63 Stat. 425.

§ 1410. Annual contributions in assistance of low rentals—Authoriza tion

(a) The Authority may make annual contributions to public hou ing agencies to assist in achieving and maintaining the low-rent characte of their housing projects. The annual contributions for any such projec shall be fixed in uniform amounts, and shall be paid in such amount over a fixed period of years. The Authority shall embody the pro visions for such annual contributions in a contract guaranteeing thei payment over such fixed period: *Provided*, That the Authority ma in addition to the payments guaranteed under the contract, pay not t exceed $120 per annum per dwelling unit occupied by an elderly famil or a large family, or a family of unusually low income, or a displace family if such family was displaced by an urban renewal or low-ren housing project on or after January 27, 1964, on the last day of the projec fiscal year where such amount, in the determination of the Authorit was necessary to enable the public housing agency to operate the projec on a solvent basis. The Authority shall not make any contract for loan (other than preliminary loans) or for annual contributions or for capita grants pursuant to this chapter with respect to any low-rent housin project initiated after March 1, 1949, unless the governing body of th locality involved has entered into an agreement with the public housin agency providing that, subsequent to the initiation of the low-rent hou ing project and within five years after the completion thereof, there ha been or will be elimination, as certified by the local governing body, b demolition, condemnation, effective closing, or compulsory repair or im provement, of unsafe or insanitary dwelling units situated in the localit or metropolitan area substantially equal in number to the number o newly constructed dwelling units provided by such projects: *Provided however*, That where more than one family is living in an unsafe or in sanitary dwelling suit the elimination of such unit shall count as th elimination of units equal to the number of families accommodated there

n: *Provided further*, That such elimination may, in the discretion of the Authority be deferred in any locality or metropolitan area where here is an acute shortage of decent, safe, or sanitary housing available o families of low income: *And provided further*, That this requirement shall not apply in the case of any low-rent housing project located in a rural nonfarm or Indian area, or to any low-rent housing project developed on the site of a sum cleared subsequent to July 15, 1949, and that the dwelling units which had been eliminated by the clearance of the site of such project shall not be counted as elimination for any other low-rent project.

Limitation on particular contribution and periods

(b) Annual contributions shall be strictly limited to the amounts and periods necessary, in the determination of the Authority, to assure the low-rent character of the housing projects involved. Toward this end the Authority may prescribe regulations fixing the maximum contributions available under different circumstances, giving consideration to cost, location, size, rent-paying ability of prospective tenants, or other factors bearing upon the amounts and periods of assistance needed to achieve and maintain low rentals. Such regulations may provide for rates of contribution based upon development, acquisition or administration cost, number of dwelling units, number of persons housed, or other appropriate factors: *Provided*, That the fixed contribution payable annually under any contract shall in no case exceed a sum equal to the annual yield, at the applicable going Federal rate plus 1 per centum, upon the development or acquisition cost of the low-rent housing or slum-clearance project involved.

Reduction in annual contributions; duration of contracts

(c) Every contract for annual contributions shall provide that whenever in any year the receipts of a public housing agency in connection with a low-rent housing project exceed its expenditures (including debt service, administration, maintenance, establishment of reserves, and other costs and charges), an amount equal to such excess shall be applied, or set aside for application, to purposes which, in the determination of the Authority, will effect a reduction in the amount of subsequent annual contributions. In no case shall any contract for annual contributions be made for a period exceeding sixty years: *Provided*, That, in the case of projects initiated after March 1, 1949, contracts for annual contributions shall not be made for a period exceeding forty years from the date the first annual contribution for the project is paid: *Provided further*, That, in the case of such projects or any other projects with respect to which the contracts for annual contributions (including contracts which amend or supersede contracts previously made) provide for annual contributions for a period not exceeding forty years from the date the first annual contribution for the project is paid, the fixed contribution may exceed the amount provided in the first proviso of subsection (b) of this section by 1 per centum of development or acquisition cost: *And provided further*, That the amount of the fixed annual contribution which would be established under this chapter for a newly constructed project by a public housing agency designed to accommodate a number of families of a given size and kind may be established, as a maximum annual contribution in lieu of any other guaranteed contribution authorized under this section, for a project by such public housing agency which would provide housing for the comparable number, sizes, and kinds of families through the acquisition, acquisition and rehabilitation, or use under lease of existing structures which are suitable for low-rent housing use and obtainable in the local market.

Availability of funds

(d) All payments of annual contributions pursuant to this section shall be made out of any funds available to the Authority when such payments are due, except that its capital and its funds obtained through

the issuance of obligations pursuant to section 1420 of this title (includ ing repayments or other realizations of the principal of loans made out o such capital and funds) shall not be available for the payment of suc annual contributions.

Limitation on aggregate contractual contributions

(e) The Authority is authorized to enter into contracts for annua contributions aggregating not more than $554,250,000 per annum, whic limit shall be increased by $100,000,000 on August 1, 1968, and by furthe amounts of $150,000,000 on July 1 in each of the years 1969 and 197(respectively but any such contracts for additional units for any on State shall not, after June 30, 1961, be entered into for more than 15 pe centum of the aggregate amount not already guaranteed under contract for annual contributions on such date: *Provided*, That subject to any con tractual obligation outstanding on Aug. 10, 1965, any units not unde construction within five years from the date they were reserved to a publi housing agency may be reserved, allocated, or placed under contract fo annual contributions in any State without limitation as to the aggregat amount of units which may be placed under contract for annual contribu tions in any one State: *Provided further*, That no such new contract fo additional units shall be entered into after June 30, 1961 except wit respect to low-rent housing for a locality respecting which the Secre tary has made the determination and certification relating to a workabl program as prescribed in section 1451(c) of this title, and the Au thority shall enter into only such new contracts for preliminary loans a are consistent with the number of dwelling units for which contracts fo annual contributions may be entered into. Without further authorizatio from Congress, no new contracts for annual contributions beyond thos herein authorized shall be entered into by the Authority. The fait of the United States is solemnly pledged to the payment of all annual con tributions contracted for pursuant to this section, and there is hereb authorized to be appropriated in each fiscal year, out of any money in th Treasury not otherwise appropriated, the amounts necessary to provide fo such payments.

Payments under contractual contributions to be pledged for loans

(f) Payments under annual contributions contracts shall be pledged if the Authority so requires, as security for any loans obtained by a publi housing agency to assist the development or acquisition of the housin project to which the annual contributions relate.

Maximum income limits; admission policies

(g) Every contract for annual contributions for any low-rent housin project shall provide that—

(1) the maximum income limits fixed by the public housing agenc shall be subject to the prior approval of the Authority and the Au thority may require the agency to review and revise such limits if th Authority determines that changed conditions in the locality mak such revisions necessary in achieving the purposes of the chapter

(2) the public housing agency shall adopt and promulgate regula tions establishing admission policies which shall give full consider eration to its responsibility for the rehousing of displaced families, t the applicant's status as a serviceman or veteran or relationship to serviceman or veteran or to a disabled serviceman or veteran, and t the applicant's age or disability, housing conditions, urgency of hous ing need, and source of income: *Provided*, That in establishing suc admission policies the public housing agency shall accord to familie of low income such priority over single persons as it determines to b necessary to avoid undue hardship; and

(3) the public housing agency shall determine, and so certify t the Authority, that each family in the project was admitted in ac cordance with duly adopted regulations and approved income limits;

and the public housing agency shall make periodic reexaminations of the incomes of families living in the project and shall require any family whose income has increased beyond the approved maximum income limits for continued occupancy to move from the project unless the public housing agency determines that, due to special circumstances, the family is unable to find decent, safe and sanitary housing within its financial reach although making every reasonable effort to do so, in which event such family may be permitted to remain for the duration of such a situation if it pays an increased rent consistent with such family's increased income.

Exemptions of projects from taxes; contributions by States, city, county or other political subdivisions

(h) Every contract made pursuant to this chapter for annual contributions for any low-rent housing project initiated after March 1, 1949, shall provide that no annual contributions by the Authority shall be made available for such project unless such project (exclusive of any part thereof covered by a contract or conveyed pursuant to paragraph (9) of section 1415 of this title, and exclusive of any portion thereof which is not assisted by annual contributions under this chapter) is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivisions, but such contract shall require the public housing agency to make payments in lieu of taxes equal to 10 per centum of the annual shelter rents charged in such project or such lesser amount as (i) is prescribed by State law, or (ii) is agreed to by the local governing body in its agreement for local cooperation with the public housing agency required under section 1415(7) (b) (i) of this title, or (iii) is due to failure of a local public body or bodies other than the public housing agency to perform any obligation under such agreement: *Provided*, That, with respect to any such project which is not exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivisions, such contract shall provide, in lieu of the requirement for tax exemption and payments in lieu of taxes, that no annual contributions by the Authority shall be made available for such project unless and until the State, city, county, or other political subdivisions in which such project is situated shall contribute, in the form of cash or tax remission, the amount by which the taxes paid with respect to the project exceed 10 per centum of the annual shelter rents charged in such project: *Provided further*, That, prior to execution of the contract for annual contributions the public housing agency shall, in the case of a tax-exempt project, notify the governing body of the locality of its estimate of the annual amount of such payments in lieu of taxes and of the amount of taxes which would be levied if the property were privately owned, or, in the case where the project is taxed, its estimate of the annual amount of the local cash contribution, and shall thereafter include the actual amounts of such payments or contributions in its annual report. Contracts for annual contributions entered into prior to September 2, 1964, may be amended in accordance with the first sentence of this subsection.

Payment for services and facilities to municipalities or other local governmental agencies

(i) Notwithstanding any other provision of law or any contract or other arrangement made pursuant thereto, any public housing agency which utilizes public services and facilities of a municipality or other local governmental agency making charges therefor separate from real and personal property taxes shall be authorized by the Authority (without any amendment to the contract for annual contributions or deductions from payments in lieu of taxes otherwise payable) to pay to such municipality or other local governmental agency the amount that would be charged private persons or dwellings similarly situated for such facilities and services.

* * * * * * * * * *

Sale of projects to private ownership; procedure; proceeds

(*l*) In any community where it has been determined by resolutio ordinance, or by referendum, that a project shall be liquidated by thereof to private ownership, such community may negotiate with Federal Government with respect to the sale of the project, and the thority shall agree that sale of the project may be made, sub to any outstanding contracts made pursuant to paragraph (9) of sec 1415 of this title, after public advertisement to the highest bidder (1) payment and retirement of all outstanding obligations (together any interest payable thereon and any premiums prescribed for the rede tion of any bonds, notes, or other obligations prior to maturity) in nection with the project, and (2) payment of any proceeds received f the sale of the project in excess of the amounts required to comply the requirements of the preceding clause numbered (1) to the Aut ity and to local public bodies in proportion to the aggregate contribu which the Authority and such local public bodies have made to project.

As amended Aug. 10, 1965, Pub.L. 89–117, Title V, §§ 501–504, 507 (1), (2), 79 Stat. 486–488; May 25, 1967, Pub.L. 90–19, § 2(a), 81 S 19; Aug. 1, 1968, Pub.L. 90–448, Title II, §§ 203(a), 206(b), 209 82 Stat. 503, 505.

* * * * * * * * * *

1968 Amendment. Subsec. (a). Pub.L. 90–448, §§ 206(b), 209(b), amended first proviso to authorize the Authority to pay not more than $120 per annum per dwelling unit occupied by a large family or a family of unusually low income, and to eliminate provisions which related to leasing of dwelling units to elderly or displaced families, and, in the last proviso, substituted "rural nonfarm or Indian area" for "rural nonfarm area."

Subsec. (e). Pub.L. 90–448, § 203(a), provided for an increase of $100,000,000 in the aggregate amount of permissible annual contributions on August 1, 1968, and for further increases of $150,000,000 on July 1, 1969 and July 1, 1970.

1967 Amendment. Subsec. (e). Pub.L. 90–19 substituted "Secretary" for "Administrator".

1965 Amendment. Subsec. (a). Pub.L. 89–117, § 501, permitted acceptance by the public housing agency of certification by local governing bodies that they have complied with the equivalent slum housing elimination requirements.

Subsec. (c). Pub.L. 89–117, § 502, added proviso allowing the establishment, as a maximum annual contribution in lieu of any other guaranteed contribution, of the amount of the fixed annual contribution which would be established for a newly constructed project but that w provide housing for comparable per through acquisition and rehabilitatio existing structures.

Subsec. (e). Pub.L. 89–117, §§ 503, provided for increases of $47,000,00 the aggregate amount of permissible nual contributions on August 10, 1965, on July 1 in 1966, 1967, and 1968, spectively, and added proviso permit reallocation of units not under const tion within 5 years from the date served, without regard to the 15 per state limit.

Subsec. (h). Pub.L. 89–117, § 507(b) inserted "any part thereof covered b contract or conveyed pursuant to p graph (9) of section 1415 of this t and exclusive of" following "exclu of" in the parenthetical material.

Subsec. (*l*). Pub.L. 89–117, § 507(b) inserted ", subject to any outstand contracts made pursuant to paragr (9) of section 1415 of this title," follow "may be made".

Legislative History: For legislative tory and purpose of Pub.L. 89–117, 1965 U.S.Code Cong. and Adm.News, 2614. See, also, Pub.L. 90–19, 1967 U.S.C Cong. and Adm.News, p. 1194; Pul 90–448, 1968 U.S.Code Cong. and A News, p. —.

§ 1411. Capital grants in assistance of low rentals—Authorization

(a) As an alternative method of assistance to that provided in sect 1410 of this title, when any public housing agency so requests and dem strates to the satisfaction of the Authority that such alternative metho better suited to the purpose of achieving and maintaining low rentals a to the other purposes of this chapter, capital grants may be made to su agency for such purposes. The capital grants thus made for any low-re housing or slum-clearance project shall be paid in connection with its d velopment or acquisition, and shall be strictly limited to the amounts n essary, in the determination of the Authority, to assure its low-rent chara ter.

Limitation on amount of particular grant

(b) Pursuant to subsection (a) of this section, the Authority may ma a capital grant for any low-rent-housing or slum-clearance project, whi

all in no case exceed 25 per centum of its development or acquisition t.

Availability of funds

(c) All payments of capital grants by the Authority pursuant to sub- tion (b) of this section shall be made out of any funds available to Authority, except that its capital and its funds obtained through the uance of obligations pursuant to section 1420 of this title (including ayments or other realizations of the principal of loans made out of h capital and funds) shall not be available for the payment of such ital grants.

Limitation on aggregate grants

(d) The Authority is authorized, on or after September 1, 1937 to make ital grants (pursuant to subsection (b) of this section) aggregating more than $10,000,000, on or after July 1, 1938, to make additional ital grants aggregating not more than $10,000,000, and on or after y 1, 1939, to make additional capital grants aggregating not more than),000,000. Without further authorization from Congress, no capital nts beyond those herein authorized shall be made by the Authority.

Additional grants for labor costs

(e) To supplement any capital grant made by the Authority in connec- n with the development of any low-rent-housing or slum-clearance proj-, the President may allocate to the Authority, from any funds available the relief of unemployment, an additional capital grant to be expended payment of labor used in such development: *Provided*, That such ad- ional capital grant shall not exceed 15 per centum of the development t of the low-rent-housing or slum-clearance project involved.

pt. 1, 1937, c. 896, § 11, 50 Stat. 893, amended July 15, 1949, c. 338, le III, § 307(d), 63 Stat. 430.

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§ 1412. Disposal of Federal projects—Purpose

(a) It is declared to be the purpose of Congress to provide for the or- ly disposal of any low-rent-housing projects hereafter transferred to acquired by the Authority through the sale or leasing of such projects hereinafter provided; and in order to continue the relief of Nation- de unemployment and in order to avoid waste pending such sale or lease, provide for the completion and temporary administration of such proj- s by the Authority.

Authorization

(b) As soon as practicable the Authority shall sell its Federal projects divest itself of their management through leases.

Sale

(c) The Authority may sell a Federal project only to a public using agency or to a nonprofit body for use as low-rent housing. Any ch sale shall be for a consideration, in whatever form may be satisfac- y to the Authority, equal at least to the amount which the Author- determines to be the fair value of the project for housing rposes of a low-rent character (making such adjustment as the Admin- ration deems advisable for any annual contributions which may here- er be given hereunder in aid of the project), less such allowance for preciation as the Authority shall fix. Such project shall then be- me eligible for loans pursuant to section 1409 of this title, and either nual contributions pursuant to section 1410 of this title or a capital nt pursuant to section 1411 of this title. Any obligation of the pur- ser accepted by the Authority as part of the consideration for sale of such project shall be deemed a loan pursuant to section 1409 of s title.

Lease

(d) The Authority may lease any Federal low-rent-housing project, whole or in part, to a public housing agency. The lessee of any proje pursuant to this subsection, shall assume and pay all management, oper tion, and maintenance costs, together with payments, if any, in lieu taxes, and shall pay to the Authority such annual sums as the Authori shall determine are consistent with maintaining the low-rent character such project. The provisions of section 303b of Title 40, shall not app to any lease pursuant to this chapter.

Rentals pending sale or lease

(e) In the administration of any Federal low-rent-housing proje pending sale or lease, the Authority shall fix the rentals at the amoun necessary to pay all management, operation, and maintenance costs, t gether with payments, if any, in lieu of taxes, plus such additional amoun as the Authority shall determine are consistent with maintaining the lo rent character of such project.

Transfer of labor supply centers, camps, homes, and other facilities; operatio disposal; rentals pending sale or lease; transfer without monetary co sideration; finding and certification; preferences; Florida camps; mi eral rights reserved; undisposed property

(f) There is transferred to the Authority, effective not later than six days after April 20, 1950, all right, title, and interest, including contrac ual rights and reversionary interests, held by the Federal Government and with respect to all labor supply centers, labor homes, labor camp and facilities held in connection therewith and heretofore administered the Secretary of Agriculture, for use as low-rent housing projects f families and persons of low income. Such projects when so transferre shall (notwithstanding any other provision of law) be low-rent housi projects subject to the provisions of this chapter, except as otherwise pr vided in this subsection. Such projects shall be operated for the pri cipal purpose of housing persons engaged in agricultural work, and prefe ence for occupancy in such projects shall be given to agricultural wor ers and their families; the rents in such projects shall not be higher tha the rents which such tenants can afford; and the provisions of the secon third, and fourth sentences of section 1402(1) of this title shall not applicable to such projects. The Authority is authorized to enter in contracts for disposal of said projects by any of the methods provided i this chapter, including disposal of any such project to a public housin agency for a consideration consisting of the payment by the public hou ing agency to the Authority during a term of not less than twenty yea of all income therefrom after deduction of the amounts necessary for (i reasonable and proper costs of management, operation, maintenance, an improvement of such project; (ii) payments in lieu of taxes not in exce of 10 per centum of shelter rents; (iii) establishment and maintenan of reasonable and proper reserves; and (iv) the payment of current maturing installments of principal and interest on any indebtedness incu red in connection with such project by the public housing agency with t approval of the Authority. Pending sale or lease of said projects to publ housing agencies, the Authority may continue present leases and permit or may enter into new leases with public bodies or nonprofit organizatio for the operation of such projects. Pending sale of such projects the A thority may make any necessary improvements thereto and may pay an deficits incurred in their improvement and administration out of any the funds available to it under this chapter. Appropriations to reimburs the Authority for any amounts expended pursuant to this subsection, i excess of the funds transferred with such projects, are authorized. No withstanding any other provision of law, upon the filing of a reque therefor within eighteen months after August 7, 1956, the Authority sha relinquish, transfer, and convey, without monetary consideration, all c its rights, title, and interest in and with respect to any such project o

any part thereof (including such land as is determined by the Authority to be reasonably necessary to the operation of such project, and including contractual rights to revenues, reserves, and other proceeds therefrom), (1) in the case of any State other than Florida, to any public housing agency whose area of operation includes the project, upon a finding and certification by the public housing agency (which shall be conclusive upon the Authority) that the project is needed to house persons and families of low income and that preference for occupancy in the project will be given first to low-income agricultural workers and their families and second to other low-income persons and their families; and (2) in the case of Florida, to any public housing agency in the State whenever, under the laws of the State, such agency (A) is authorized to acquire and operate such project, (B) is required to give preference for occupancy in such project, first, to low-income agricultural workers and their families, and second, to other low-income persons and their families, (C) is required, in the event of the disposition of such project by sale or otherwise, to use the proceeds thereof and any available accumulated earnings to construct facilities (which shall be subject to the same preference as those specified in clause (B)) for occupancy by low-income agricultural workers and their families in the same area, and (D) is required, so long as it continues to own or operate such project, to have on its managing board one or more members whose principal occupation is farming. Upon the relinquishment and transfer of any such project it shall cease to be a low-rent project within the meaning of this chapter, and the Authority shall have no further jurisdiction over it, except that in any conveyance under the preceding sentence the Authority may reserve to the United States any mineral rights of whatsoever nature upon, in, or under the property, including such rights of access to and the use of such parts of the surface of the property as may be necessary for mining and saving the minerals. Any project, or part thereof not relinquished and conveyed pursuant to this subsection or under a contract for disposal pursuant to this subsection within eighteen months after August 7, 1956 shall be disposed of by the Authority pursuant to subsection (e) of section 1413 of this title, notwithstanding the parenthetical clause in such subsection.

As amended Aug. 10, 1965, Pub.L. 89–117, Title V, § 505, 79 Stat. 487.

1965 Amendment. Subsec. (c). Pub.L. 89–117 inserted "or to a nonprofit body or use as low-rent housing" following "public housing agency" in the first sentence.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614.

§ 1413. Powers of Authority; miscellaneous—Foreclosure and other rights

(a) The Authority may foreclose on any property or commence any action to protect or enforce any right conferred upon it by any law, contract, or other agreement. The Authority may bid for and purchase at any foreclosure by any party or at any other sale, or (pursuant to section 421a of this title or otherwise) acquire or take possession of any project which it previously owned or in connection with which it has made a loan, annual contribution, or capital grant; and in such event the Authority may complete, administer, pay the principal of and interest on any obligations issued in connection with such project, dispose of, and otherwise deal with, such projects or parts thereof, subject, however, to the limitations elsewhere in this chapter governing their administration and disposition.

Civil and criminal jurisdiction of States

(b) The acquisition by the Authority of any real property pursuant to this chapter shall not deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property; and, insofar as any such jurisdiction may have been taken

away or any such rights impaired by reason of the acquisition of a property transferred to the Authority pursuant to section 1404(b) of tl title, such jurisdiction and such rights are fully restored.

Payments in lieu of taxes

(c) The Authority may enter into agreements to pay annual sums lieu of taxes to any State or political subdivision thereof with respect any real property owned by the Authority. The amount so paid for a year upon any such property shall not exceed the taxes that would be pa to the State or subdivision, as the case may be, upon such property if were not exempt from taxation thereby.

Insurance

(d) The Authority may procure insurance against any loss in conne tion with its property and other assets (including mortgages), in su amounts, and from such insurers, as it deems desirable.

Sale or lease of non-project property

(e) The Authority may sell or exchange at public or private sale, lease, any real property (except low-rent-housing projects, the dispositio of which is governed elsewhere in this chapter) or personal property, an sell or exchange any securities or obligations, upon such terms as it ma fix. The Authority may borrow on the security of any real or persona property owned by it, or on the security of the revenues to be derive therefrom, and may use the proceeds of such loans for the purposes of thi chapter.

As amended May 25, 1967, Pub.L. 90–19, § 2(g), 81 Stat. 20.

1967 Amendment. Subsec. (b). Pub.L. 90–19 substituted "1404(b)" for "1404(d)".

Legislative History: For legislative hi tory and purpose of Pub.L. 90–19, see 19 U.S.Code Cong. and Adm.News, p. —.

§ 1414. Modification, amendment, or supersedure of contracts

Subject to the specific limitations or standards in this chapter governin the terms of sales, rentals, leases, loans, contracts for annual contribu tions, contracts for capital grants, or other agreements, the Authority may whenever it deems it necessary or desirable in the fulfillment of the pur poses of this chapter, consent to the modification, with respect to rate o interest, time of payment of any installment of principal or interest, se curity, amount of annual contribution, or any other term, of any contrac or agreement of any kind to which the Authority is a party or which ha been transferred to it pursuant to this chapter. When the Authority find that it would promote economy or be in the financial interest of th Federal Government, any contract heretofore or hereafter made for an nual contributions, loans, or both, may, with Presidential approval, b amended or superseded by a contract of the Authority so that the going Federal rate on the basis of which such annual contributions or interes rate on the loans, or both, respectively, are fixed shall mean the going Federal rate, as herein defined, on the date of Presidential approval o such amending or superseding contract: *Provided*, That contracts may not be amended or superseded in a manner which would impair the rights of the holders of any outstanding obligations of the public housing agency involved for which annual contributions have been pledged. Any rule of law contrary to this provision shall be deemed inapplicable. Sept. 1, 1937 c. 896, § 14, 50 Stat. 895, amended July 15, 1949, c. 338, Title III, § 304 (g), 63 Stat. 426.

Delegation of Functions. Functions of the President under this section delegated to the Housing and Home Finance Administrator, see section 1(2) of Ex.Ord. No.11196, Feb. 2, 1965, 30 F.R. 1171, set out as a note under section 1701c of Title 12, Banks and Banking.

§ 1415. Preservation of low rents

In order to insure that the low-rent character of housing projects will e preserved, and that the other purposes of this chapter will be achieved, is provided that—

Low-rent-housing projects

(1) When a loan is made pursuant to section 1409 of this title for a w-rent-housing project the Authority may retain the right, in the vent of a substantial breach of the condition (which shall be embodied the loan agreement) providing for the maintenance of the low-rent haracter of the housing project involved or in the event of the acquisi-on of such project by a third party in any manner including a bona-fide reclosure under a mortgage or other lien held by a third party, to in-ease the interest payable thereafter on the balance of said loan then eld by the Authority to a rate not in excess of the going Federal te (at the time of such breach or acquisition except pursuant to para-raph (9) of this section) plus 2 per centum per annum or to declare the npaid principal on said loan due forthwith.

Slum-clearance projects

(2) When a loan is made pursuant to section 1409 of this title for a um-clearance project the Authority shall retain the right, in the ent of the leasing or acquisition of such project by a third party in any anner including a bona-fide foreclosure under a mortgage or other lien eld by a third party, to increase the interest payable thereafter on the lance of said loan then held by the Authority to a rate not in ex-ss of the going Federal rate (at the time of such leasing or acquisition cept pursuant to paragraph (9) of this section) plus 2 per centum per num or to declare the unpaid principal on said loan due forthwith.

Annual contributions

(3) When a contract for annual contributions is made pursuant to sec-n 1410 of this title, the Authority shall retain the right, in the ent of a substantial breach of the condition (which shall be embodied such contract) providing for the maintenance of the low-rent character the housing project involved, to reduce or terminate the annual con-butions payable under such contract. In the event of the acquisition xcept pursuant to paragraph (9) of this section) of such project by a rd party in any manner including a bona-fide foreclosure under a mort-ge or other lien held by a third party, such annual contributions shall rminate.

Contractual aids

(4) The Authority may also insert in any contract for loans, annual ntributions, capital grants, sale, lease, mortgage, or any other agreement instrument made pursuant to this chapter, such other covenants, con-ions, or provisions at [1] it may deem necessary in order to insure the low-t character of the housing project involved: *Provided*, That any such ntract for a substantial loan may contain a condition requiring the intenance of an open space or playground in connection with the hous-project involved if deemed necessary by the Authority for the safety health of children.

Limitation on dwelling-unit costs; modular measure principle

(5) Every contract made pursuant to this chapter for loans (other than liminary loans), annual contributions, or capital grants for any low-t housing project completed after January 1, 1948, shall provide that cost for construction and equipment of such project (excluding land, molition, and nondwelling facilities) on which the computation of any nual contributions under this chapter may be based shall not exceed 400 per room ($3,500 per room in the case of Alaska, or in the case accommodations designed specifically for elderly families $3,500 per m and $4,000 per room in the case of Alaska): *Provided*, That if the

Secretary finds that in the geographical area of any project (i) it not feasible under the aforesaid cost limitations to construct the proje without sacrifice of sound standards of construction, design, and livabilit and (ii) there is an acute need for such housing, he may prescribe in su contract cost limitations which may exceed by not more than $750 p room the limitations that would otherwise be applicable to such proje hereunder. Every contract made pursuant to this chapter for loans (oth than preliminary loans), annual contributions, or capital grants with r spect to any low-rent housing project initiated after March 1, 1949, sha provide that such project shall be undertaken in such a manner that it w not be of elaborate or extravagant design or materials, and economy w be promoted both in construction and administration. In order to atta the foregoing objective, every such contract shall provide that no awa of the main construction contract for such project shall be made unle the Authority, taking into acount the level of construction cos prevailing in the locality where such project is to be located, shall ha specifically approved the amount of such main construction contract. E ery contract made pursuant to this chapter for loans, annual contrib tions, or capital grants, with respect to a project for which the preparati of plans, drawings, and specifications has not been started or contract for prior to July 12, 1957, shall require that such plans, drawings, a specifications follow the principle of modular measure in every case deer ed feasible by the public housing agency, in order that the housing may l built by conventional construction, on-site fabrication, factory pre-cuttin factory fabrication, or any combination of these construction methods.

Contracts covering more than one project

(6) Any contract for loans or annual contributions, or both, entere into by the Authority with a public housing agency, may cover one more than one low-rent housing project owned by said public housin agency; in the event such contract covers two or more projects, suc projects may, for any of the purposes of this chapter and of such contra (including, but not limited to, the determination of the amount of t loan, annual contributions, or payments in lieu of taxes, specified in suc contract), be treated collectively as one project.

Local responsibilities and determinations

(7) In recognition that there should be local determination of the nee for low-rent housing to meet needs not being adequately met by priva enterprise—

(a) The Authority shall not make any contract with a public hou ing agency for preliminary loans (all of which shall be repaid out any moneys which become available to such agency for the develo ment of the projects involved) for surveys and planning in respect any low-rent housing projects initiated after March 1, 1949, (i) u less the governing body of the locality involved has by resolutio approved the application of the public housing agency for such pr liminary loan; and (ii) unless the public housing agency has demo strated to the satisfaction of the Authority that there is a need f such low-rent housing which is not being met by private enterprise and

(b) The Authority shall not make any contract for loans (othe than preliminary loans) or for annual contributions pursuant to th chapter with respect to any low-rent housing project initiated aft March 1, 1949, (i) unless the governing body of the locality involve has entered into an agreement with the public housing agency pr viding for the local cooperation required by the Authority pursua to this chapter; (ii) unless the public housing agency has demo strated to the satisfaction of the Authority that a gap of at least 2 per centum (except in the case of a displaced family or an elderl family) has been left between the upper rental limits for admissio to the proposed low-rent housing and the lowest rents at which pr

vate enterprise unaided by public subsidy is providing (through new construction and available existing structures) a substantial supply of decent, safe, and sanitary housing toward meeting the need of an adequate volume thereof; and (iii) unless the public housing agency has demonstrated to the satisfaction of the Authority that there is a feasible method for the temporary relocation of the individuals and families displaced from the project site, and that there are or are being provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of such individuals and families, decent, safe, and sanitary dwellings equal in number to the number of and available to such individuals and families and reasonably accessible to their places of employment.

Relocation payments; inclusion with development or acquisition cost for determination of loans and contributions; definition

(8) The Authority may authorize the cost of relocation payments nade by public housing agencies to be included with the development or icquisition cost of any project for purposes of determining the amount of loans and annual contributions authorized to be made with respect to such project under sections 1409 and 1410 of this title, but such costs shall be separately stated as relocation costs. For purposes of this paragraph, a "relocation payment" is a payment (i) which is made to an individual, family, business concern, or nonprofit organization displaced on or after January 27, 1964, from a low-rent housing project site as a result of the acquisition of real property by a public housing agency, (ii) which s not otherwise authorized under any Federal law, and (iii) which is nade only on such terms and conditions, and subject to such limitations, as are authorized (as of the time such payment is approved) under section 1465(b), (c), and (d) of this title for relocation payments made to ndividuals, families, business concerns, or nonprofit organizations, as the ase may be.

Purchase of dwelling unit by member of tenant family in low-rent public housing project for occupancy by himself or members of his family; terms

(9) Notwithstanding any other provision of this chapter, but subject o the provisions of any contract with the Authority, any public housing agency may permit any member of a tenant family to enter into a contract (either individually or as a member of a group) for the acquisition of a dwelling unit in any project of the public housing agency, if the property to be acquired is sufficiently separable from other property retained by the public housing agency to make it suitable for sale and for occupancy by such purchaser or a member or members of his family, upon the following terms:

(A) The purchaser shall pay at least (i) a pro rata share cost of any services furnished him by the public agency, including but not limited to, administration, maintenance, repairs, utilities, insurance, provision of reserves, and other expenses, (ii) local taxes on his dwelling unit, and (iii) monthly payments of interest and principal sufficient to amortize a sales price, equal to the greater of the unamortized debt or the appraised value at the time such purchase contract is entered into) of the dwelling unit, in not more than forty years: *Provided*, That the public housing agency may, under terms and conditions to be prescribed by it, permit a purchaser to apply an amount equal to the net rent paid for his dwelling unit, over a period not exceeding three years prior to the entering into of any such contract, toward the purchase price of such unit;

(B) The interest rate shall be fixed at not less than the average interest cost of loans outstanding on the project, except that in the case of a project on which bonds are not outstanding the interest rate shall be fixed at not less than the going Federal rate applicable to such project;

(C) The principal payments shall be not less than one-half of 1 per centum per annum of the sales price during the first five years after pur-

chase, 1 per centum per annum during the next five years, 1½ per centu per annum during the third five years, and thereafter not less than th principal payments resulting from a level debt service of interest and prir cipal over the balance of the payment period; and

(D) If at any time (i) a purchaser fails to carry out his contract wit the public housing agency and if no member of his family who resides i the dwelling assumes such contract, or (ii) the purchaser or a member c his family who assumes the contract does not reside in the dwelling, th public housing agency shall have an option to acquire his interest unde such contract upon payment to him or his estate of an amount equal to hi aggregate principal payments plus the value to the public housing agency c any improvements made by him, less an amount equal to 2½ per centu of the sales price.

Contracts and grants to finance tenant services for families living in low-rent housing projects; authorization of appropriations

(10) The Secretary is authorized to enter into contracts to make grant to public housing agencies to assist, where necessary, in financing tenan services for families living in low-rent housing projects. In making suc contracts and grants, the Secretary shall give preference to program providing for the maximum feasible participation of the tenants in th development and operation of such tenant services. For purposes o this paragraph the term "tenant services" includes the following service and activities for families living in low-rent housing projects: counselin on household management, housekeeping, budgeting, money management child care, and similar matters; advice as to resources for job trainin and placement, education, welfare, health, and other community services services which are directly related to meeting tenant needs and providin a wholesome living environment; and referral to appropriate agencie when necessary for the provision of such services. To the maximun extent available and appropriate, existing public and private agencies i the community shall be used for the provision of such services. Ther are authorized to be appropriated for the purposes of this paragrap not to exceed $15,000,000 for the fiscal year ending June 30, 1969, an not to exceed $30,000,000 for the fiscal year ending June 30, 1970. An amounts so appropriated shall remain available until expended, and an amounts authorized for any fiscal year under this paragraph but not ap propriated may be appropriated for any succeeding fiscal year commencin prior to July 1, 1970.

Limitation on high-rise elevator projects

(11) Except in the case of housing predominantly for the elderly, upo enactment of this paragraph, the Secretary shall not approve high-ris elevator projects for families with children unless he makes a determina tion that there is no practical alternative.

As amended Aug. 10, 1965, Pub.L. 89–117, Title IV, § 404(c) (2), Titl V §§ 506, 507(a), 79 Stat. 486, 487, 488; May 25, 1967, Pub.L. 90–19 § 2(a), 81 Stat. 19; Aug. 1, 1968, Pub.L. 90–448, Title II, §§ 204, 205 207, 82 Stat. 503, 504.

[1] So in original. Probably should read "as".

1968 Amendment. Par. (9). Pub.L. 90–448, § 205, substituted ", if the property to be acquired is sufficiently separable from other property retained by the public housing agency to make it suitable" for "which is suitable by reason of its detached or semidetached construction."

Par. (10). Pub.L. 90–448, § 204, added par. (10).

Par. (11). Pub.L. 90–448, § 207, added par. (11).

1967 Amendment. Par. (5). Pub.L. 90–19 substituted "Secretary" for "Administrator".

1965 Amendment. Pars. (1), (2), (3). Pub.L. 89–117, § 507(b) (3), inserted "(except pursuant to paragraph (9) of this section)" following "acquisition" the firs place it appears in each par.

Par. (5). Pub.L. 89–117, § 506, substi tuted "$2,400" for "$2,000", "$3,500" fo "$3,000", and "$4,000" for "$3,500."

Par. (8). Pub.L. 89–117, § 404(c) (2) substituted "section 1465(b), (c), and (d)" for "section 1465(b) or (c)".

Par. (9). Pub.L. 89–117, § 507(a), add ed par. (9).

Legislative History: For legislative his tory and purpose of Pub.L. 89–117, se 1965 U.S.Code Cong. and Adm.News, p 2614. See, also, Pub.L. 90–19, 1967 U.S.Cod Cong. and Adm.News, p. 1194; Pub.L 90–448, 1968 U.S.Code Cong. and Adm News, p. —.

Supplementary Index to Notes

1. Cooperation agreement

A cooperation agreement between a municipality and a local housing authority is a valid contract entitled to full constitutional protection afforded by contract clauses in State and Federal Constitutions. City of Paterson v. Housing Authority of City of Paterson, 1967, 233 A.2d 98, 96 N.J.Super. 394.

3a. Selection of sites

City housing authority's exercise of option to purchase tract for site of low rental public housing project, if not properly authorized at duly constituted meeting of housing authority, was ratified by housing authority's pleadings and position in property owners' action to enjoin housing authority from purchasing tract. Philbrook v. Chapel Hill Housing Authority, 1967, 153 S.E.2d 153, 269 N.C. 598.

Where particular tract was suitable for low rental public housing, whether city housing authority was induced to select site to meet requirements or approval of United States Public Housing Administration was immaterial in determination of whether selection of site was abuse of discretion by city housing authority. Id.

If particular site selected by city housing authority for low rental public housing project was suitable for contemplated use, selection thereof would not be subject to successful challenge by searching motives either of city authority or of United States Public Housing Administration. Id.

5. Injunction

Village was not entitled to enjoin county housing authority and Public Housing Administration from doing any further acts to locate and construct low rent housing project in village because of alleged fact that village did not approve application for preliminary loan, where village resolution authorized execution of cooperation agreement by county housing authority and village, and resolution contained statement that county housing authority had filed application for preliminary loan for village. Village of Dupo v. St. Clair County Housing Authority, D.C.Ill.1966, 253 F.Supp. 987.

6. Defenses

This section providing that Public Housing Administration shall not make any contract with public housing agency for preliminary loans unless governing body of locality has by resolution approved application of public housing agency for preliminary loan was not available to village to void its contractual obligations because village allegedly did not by resolution approve application for preliminary loan, where resolution of village authorizing execution of cooperation agreement by county housing authority and village stated that county housing authority had filed application for preliminary loan for village. Village of Dupo v. St. Clair County Housing Authority, D.C.Ill.1966, 253 F.Supp. 987.

7. Occupancy

City housing authority could not automatically exclude or evict from low rent housing facilities a low income family on sole ground that member of family had an illegitimate child or children, but authority could consider, under appropriate criteria, whether a given unwed mother and her family should be admitted to the facilities. Thomas v. Housing Authority of City of Little Rock, D.C.Ark. 1967, 282 F.Supp. 575.

City housing authority must of necessity have authority to prescribe reasonable criteria for screening of applicants for admission and for exclusion of those applicants with respect to whom illegal or disorderly conduct or conduct amounting to a nuisance may be reasonably anticipated in regard to admission to low rent housing facilities, and authority must have right to evict from facilities tenants who are guilty of such conduct after admission. Id.

§ 1416. Labor protection

In order to protect labor standards—

Minimum wages; bonds of contractors

(1) The provisions of sections 276a to 276a–5 and sections 270–270d of Title 40, shall apply to contracts in connection with the development or administration of Federal projects and the furnishing of materials and labor for such projects: *Provided*, That suits may be brought in the name of the Authority and that the Authority shall itself perform the duties prescribed by sections 276a–2(a) and 270c of Title 40.

Wages to conform to local rates; overtime compensation

(2) Any contract for loans, annual contributions, capital grants, sale, or lease pursuant to this chapter shall contain a provision requiring that not less than the salaries or wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Authority, shall be paid to all architects, technical engineers, draftsmen, and technicians, employed in the development and to all maintenance laborers and mechanics employed in the administration of the low-rent housing or slum-clearance project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, shall be paid to all laborers and mechanics employed in the development of the project involved (including a project for the use of privately built housing in any case, other than under the authority of section 1421b of this

title, where the public housing agency and the builder or sponsor ent into an agreement for such use before construction or rehabilitation is co menced), and that each such laborer or mechanic shall receive compens tion at a rate not less than one and one-half times his basic rate of p for all hours worked in any workweek in excess of eight hours in a workday or forty hours in the workweek, as the case may be; and t Authority shall require certification as to compliance with the pr visions of this subsection prior to making any payment under such co tract.

Applicability of "kick back" provisions

(3) The provisions of sections 276b and 276c of Title 40, shall app to any low-rent-housing or slum-clearance project financed in whole or part with funds made available pursuant to this chapter.

As amended Nov. 3, 1966, Pub.L. 89–754, Title X, § 1003, 80 Stat. 128 May 25, 1967, Pub.L. 90–19, § 2(h), (i), 81 Stat. 20.

* * * * * * * * * * *

References in Text. The Davis-Bacon Act, referred to in subd. (2), is classified to section 276a to 276a—5 of Title 40, Public Buildings, Property, and Works.

1967 Amendment. Par. (1). Pub.L. 90–19, § 2(h), substituted "suits may" for "suits shall" in the proviso.

Pars. (3)–(5). Pub.L. 90–19, § 2(i), redesignated former par. (5) as (3) and struck out former pars. (3) and (4) providing for application of sections 324 and 325 of Title 40 to contracts of the Housing Authority for work in connection with development and administration of Federal projects and for application of workme compensation provisions to officers a employees of the Authority, respectively.

1966 Amendment. Par. (2). Pub.L. 754 provided for conformity of wages local rates in low-rent housing proje consisting of privately built housing a for overtime compensation.

Legislative History: For legislati history and purpose of Pub.L. 89–754, s 1966 U.S.Code Cong. and Adm.News. 3999. See, also, Pub.L. 90–19, 1967 U Code Cong. and Adm.News, p. 1194.

§ 1417. Repealed. Pub.L. 90–448, Title XVII, § 1719(b), Aug. 1968, 82 Stat. 610

Section, Act Sept. 1, 1937, c. 896, § 17, 50 Stat. 897, related to capital stock of the Authority.

Retirement of Capital Stock. Section 1719(b) of Pub.L. 90–448 provided in part that: "The capital stock referred to such section [this section] shall be tired, and sum of $1,000,000 represent by such stock shall be returned to t Treasury of the United States."

§ 1417a. Additional functions, powers, and duties of Secretary

In the performance of, and with respect to, functions, powers, a duties under this chapter, the Secretary shall have (in addition to a authority otherwise vested in him) the functions, powers, and duti set forth in subsections (a), (b), and (e) of section 1749a of Title 1 Sept. 1, 1937, c. 896, § 17, as added Aug. 1, 1968, Pub.L. 90–448, Tit XVII, § 1719(c), 82 Stat. 610.

Legislative History: For legislative history and purpose of Pub.L. 90–448, see 1968 U.S.Code Cong. and Adm.News, —.

§ 1418. Availability of receipts and assets

All receipts and assets of the Authority shall be available for the pu poses of this chapter until expended. Sept. 1, 1937, c. 896, § 18, 50 Sta 897.

§ 1419. Allocation of other funds to Authority

Any funds available under any Act of Congress for allocation for hou ing or slum clearance may, in the discretion of the President, be allocat to the Authority for the purposes of this chapter. Sept. 1, 1937, c. 89 § 19, 50 Stat. 897.

§ 1420. Issuance of obligations by Authority; amount, form, and d nominations; interest rate; purchase and sale by Treasury; public del transactions

The Authority may issue and have outstanding at any one time not and other obligations for purchase by the Secretary of the Treasury in a amount which shall not, unless authorized by the President, exce $1,500,000,000. For the purpose of determining obligations incurred

ake loans pursuant to this chapter against any limitation otherwise pplicable with respect to such loans, the Secretary shall estimate the aximum amount to be loaned at any one time pursuant to loan agreeents then outstanding with public housing agencies. Such notes or her obligations shall be in such forms and denominations, shall have ich maturities, and shall be subject to such terms and conditions as may e prescribed by the Authority with the approval of the Secretary of the reasury. Such notes or other obligations shall bear interest at a rate etermined by the Secretary of the Treasury, taking into consideration e current average rate on outstanding marketable obligations of the nited States as of the last day of the month preceding the issuance of e notes or other obligations by the Authority. The Secretary of the reasury is authorized and directed to purchase any notes or other obgations of the Authority issued hereunder and for such purpose is auorized to use as a public debt transaction the proceeds from the sale any securities issued under the Second Liberty Bond Act, as amended, nd the purposes for which securities may be issued under such Act, as nended, are extended to include any purchases of such obligations. The ecretary of the Treasury may at any time sell any of the notes or other bligations acquired by him under this section. All redemptions, purhases, and sales by the Secretary of the Treasury of such notes or other bligations shall be treated as public debt transactions of the United tates.

ept. 1, 1937, c. 896, § 20, 50 Stat. 898, amended June 21, 1938, c. 554, itle VI, § 602, 52 Stat. 820; Oct. 30, 1941, c. 467, 55 Stat. 759; July 5, 1949, c. 338, Title III, § 304(h), 63 Stat. 427; Aug. 1, 1968, Pub. . 90–448, Title II, § 203(b), 82 Stat. 503.

1968 Amendment. Pub.L. 90–448 substited "which shall not, unless authorized the President, exceed $1,500,000,000" r "not to exceed $1,500,000,000", and inrted provisions directing the Secretary, r the purpose of determining obligaons incurred to make loans pursuant to is chapter against any limitation othwise applicable with respect to such loans, to estimate the maximum amount to be loaned at any one time pursuant to loan agreements then outstanding with public housing agencies.

Legislative History: For legislative ... purpose of Pub.L. 90–448, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1421. Deposit of funds; limitation on aid to particular State— lle moneys

(a) Any money of the Authority not otherwise employed may be eposited, subject to check, with the Treasurer of the United States or any Federal Reserve bank, or may be invested in obligations of the nited States or used in the purchase or retirement or redemption of ny obligations issued by the Authority.

Federal Reserve banks as financial agents

(b) The Federal Reserve banks are authorized and directed to act depositories, custodians, and fiscal agents for the Authority in the eneral exercise of its powers, and the Authority may reimburse any ch bank for its services in such manner as may be agreed upon.

Authority as financial agent of Government

(c) The Authority may be employed as a financial agent of the overnment. When designated by the Secretary of the Treasury, and bject to such regulations as he may prescribe, the Authority, shall be depository of public money, except receipts from customs.

(d) Repealed. Pub.L. 87–70, Title II, § 204(c), June 30, 1961, 75 at. 164.

ept. 1, 1937, c. 896, § 21, 50 Stat. 898; July 15, 1949, c. 338, Title I, § 307(g), 63 Stat. 431; Aug. 7, 1956, c. 1029, Title IV, § 403, Stat. 1103; June 30, 1961, Pub.L. 87–70, Title II, § 204(c), 75 at. 164.

§ 1421a. Private financing—Sale of public housing agencies' bonds

To facilitate the enlistment of private capital through the sale by pu housing agencies of their bonds and other obligations to others than Authority, in financing low-rent housing projects, and to main the low-rent character of housing projects—

Contracts for annual contributions; terms and conditions

(a) Every contract for annual contributions (including contracts wh amend or supersede contracts previously made) may provide that—

(1) upon the occurrence of a substantial default in respect to covenants or conditions to which the public housing agency is sub (as such substantial default shall be defined in such contract), public housing agency shall be obligated at the option of the thority, either to convey title in any case where, in the determinat of the Authority (which determination shall be final and c clusive), such conveyance of title is necessary to achieve the purpc of this chapter, or to deliver possession to the Authority of project, as then constituted, to which such contract relates: *Provid* That such conveyance or delivery of title shall be subject to the rig of third parties vested pursuant to paragraph (9) of section 1415 this title.

(2) the Authority shall be obligated to reconvey or to redeliver p session of the project, as constituted at the time of reconveyance redelivery, to such public housing agency or to its successor (if su public housing agency or a successor exists) upon such terms as sh be prescribed in such contract and as soon as practicable: (i) after Authority shall be satisfied that all defaults with respect to the proj have been cured, and that the project will, in order to fulfill the purpo of this chapter, thereafter be operated in accordance with the terms such contract; or (ii) after the termination of the obligation to ma annual contributions available unless there are any obligations or co nants of the public housing agency to the Authority which are then default. Any prior conveyances and reconveyances, deliveries and deliveries of possession shall not exhaust the right to require a co veyance or delivery of possession of the project to the Authority p suant to paragraph (1) of this subsection, upon the subsequent occ rence of a substantial default.

Same; fulfillment of conditions; maximum annual contributions

(b) Whenever such contract for annual contributions shall inclu provisions which the Authority, in said contract, determines are accordance with subsection (a) of this section, and the annual contrib tions, pursuant to such contract, have been pledged by the pub housing agency as security for the payment of the principal a interest on any of its obligations, the Authority (notwithstanding a other provisions of this chapter) shall continue to make annual co tributions available for the project so long as any of such obligatio remain outstanding, and may covenant in such contract (in lieu of t provision required by the first sentence of section 1415(3) of this ti and notwithstanding any other provisions of law) that in any eve such annual contributions shall in each year be at least equal to amount which, together with such income or other funds as are actual available from the project for the purpose at the time such annu contribution is made, will suffice for the payment of all installmen falling due within the next succeeding twelve months, of principal a interest on the obligations for which the annual contributions provid for in the contract shall have been pledged as security: *Provided*, Th such annual contributions shall not be in excess of the maximum su determined pursuant to the proviso of section 1410(b) of this title, where applicable, the second proviso of section 1410(c) of this titl and in no case shall such annual contributions be in excess of the ma

mum sum specified in the contract involved, nor for longer than the remainder of the maximum period fixed by the contract.

Incontestability of obligations; pledge of full faith and credit

(c) Obligations of a public housing agency which (1) are secured either (A) by a pledge of a loan under an agreement between such public housing agency and the Authority, or (B) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Authority, and (2) bear, or are accompanied by, a certificate of the Authority that such obligations are so secured, shall be incontestable in the hands of a bearer, and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Authority as security for such obligations.

As amended Aug. 10, 1965, Pub.L. 89–117, Title V, § 507(b) (4), 79 Stat. 489; May 25, 1967, Pub.L. 90–19, § 2(j), 81 Stat. 20.

1967 Amendment. Subsec. (b). Pub.L. 90–19 struck out "first" preceding "proviso" in the proviso.

1965 Amendment. Subsec. (a) (1). Pub.L. 89–117 inserted proviso that conveyance or delivery of title be subject to the rights of third parties vested pursuant to paragraph (9) of section 1415 of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 90–19, 1967 U.S.Code Cong. and Adm.News, p. —.

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2. Incontestability of bonds or other obligations

The obligation of the United States under a contract or requisition agreement that secures bonds or notes issued by a local urban renewal or public housing agency is fully binding under this section and section 1452 of this title even if litigation attacking the authority of the agency or the validity of the bonds or notes is pending at the time of issue, and nothing in the Development of Housing and Urban Development Act, section 624 et seq. of Title 5, requires a different conclusion. 1965, 42 Op.Atty. Gen., November 2.

§ 1421b. Low-rent housing in private accommodations—Purpose; approval by local governing bodies; definitions

(a) (1) For the purpose of providing a supplementary form of low-rent housing which will aid in assuring a decent place to live for every citizen and promote efficiency and economy in the program under this chapter by taking full advantage of vacancies or potential vacancies in the private housing market, each public housing agency shall, to the maximum extent consistent with the achievement of the objectives of this chapter, provide low-rent housing under this chapter in the form of low-rent housing in private accommodations in accordance with this section where such housing in private accommodations can be provided at a cost equal to or less than housing in projects assisted under other provisions of this chapter.

(2) The provisions of this section shall not apply to any locality unless the governing body of the locality has by resolution approved the application of such provisions to such locality.

(3) As used in this section, the term "low-rent housing in private accommodations" means dwelling units in an existing structure, leased from a private owner, which provide decent, safe, and sanitary dwelling accommodations and related facilities effectively supplementing the accommodations and facilities in low-rent housing assisted under the other provisions of this chapter in a manner calculated to meet the total housing needs of the community in which they are located; and the term "owner" means any person or entity having the legal right to lease or sublease property containing one or more dwelling units as described in this section.

Survey and listing of available dwelling units

(b) Beginning as soon as practicable after August 10, 1965, each public housing agency shall conduct a continuing survey and listing of the available dwelling units within the community or communities under its jurisdiction which provide decent, safe, and sanitary dwelling accommodations and

related facilities and are, or may be made, suitable for use as low-rent housing in private accommodations under this section.

Invitation to owners to make units available; inspection and approval of offered units; list of approved units

(c) Each public housing agency, by notification to the owners of housing listed under subsection (b) of this section, or by publication or advertisement, or otherwise, shall from time to time make known to the public in the community or communities under its jurisdiction the anticipated need for dwelling units in such community or communities to be used as low-rent housing in private accommodations under this section, inviting the owners of such dwelling units to make available for purposes of this section one or more of such units (not exceeding 10 per centum of the units in any single structure except to the extent that the agency, because of the limited number of units in the structure or for any other reason, determines that such limit should not be applied). The public housing agency shall conduct appropriate inspections of the units offered to be made available in any residential structure by the owner thereof in response to such invitation, and if—

(1) it finds that such units are, or may be made, suitable for use as low-rent housing in private accommodations within the meaning of subsection (a) (3) of this section, and

(2) the rentals to be charged for such units, as negotiated and agreed to by the agency and the owner of the structure in a manner consistent with subsection (d) (2) of this section, are within the financial range of families of low income,

such agency may approve such units for use as low-rent housing in private accommodations in accordance with (and subject to the applicable limitations contained in) this section. Each public housing agency shall maintain and keep current a list of units approved by it under this subsection, including such information with respect to each such unit as it may consider necessary or appropriate.

Contents and term of contracts for use of approved units

(d) To the extent of contracts for annual contributions entered into by the Authority with a public housing agency under section 1410(e) of this title, such agency may enter into contracts with the owners of structures containing dwelling units approved under subsection (c) of this section for the use of such units in accordance with this section (and no limitation not specifically provided for in this section shall be imposed by regulations of the Authority on the types or categories of structures or dwelling units, qualifying under subsection (a)(3) of this section, and approved under subsection (c) of this section, which may be so used in any community). Each such contract with an owner shall provide (with respect to any unit) that—

(1) the selection of tenants for such unit shall be the function of the owner, subject to the provisions of the contract between the Authority and the agency;

(2) the rental and other charges to be received by the owner shall be negotiated and agreed to by the agency and the owner, and the rental and other charges to be paid by the tenant shall be determined in accordance with the standards applicable to units in low-rent housing projects assisted under the other provisions of this chapter;

(3) the agency shall have the sole right to give notice to vacate, with the owner having the right to make representations to the agency for termination of a tenancy;

(4) maintenance and replacements (including redecoration) shall be in accordance with the standard practice for the building concerned, as established by the owner and agreed to by the agency; and

(5) the agency and the owner shall carry out such other appropriate terms and conditions as may be mutually agreed to by them.

Each contract between a public housing agency and an owner entered into under this subsection shall be for a term of not less than twelve months nor more than sixty months, and shall be renewable by such agency and owner at the expiration of such term.

Maximum amount of annual contributions; period and aggregate amount of payments; reimbursement of expenses

(e) The annual contribution under this chapter for a project of a public housing agency for low-rent housing in private accommodations under this section in lieu of any other guaranteed contribution authorized by section 1410 of this title shall not exceed the amount of the fixed annual contribution which would be established under this chapter for a newly constructed project by such public housing agency designed to accommodate the comparable number, sizes, and kinds of families. The period over which payments will be made to a public housing agency for a project of low-rent housing in private accommodations under this section, and the aggregate amount of such payments, under a contract for annual contributions, shall be determined on the basis of the number of units in the community or communities under the jurisdiction of such agency which are in use (or can reasonably be expected to be placed in use) as low-rent housing in private accommodations under this section, taking into account the terms of the leases under which such units are (or will be) so used. In addition, contracts for financial assistance entered into by the Authority with a public housing agency pursuant to this section shall provide for reimbursement of reasonable and necessary expenses incurred by such agency in conducting surveys, listings, and inspections described in subsections (b) and (c) of this section.

Inapplicability of certain provisions of law

(f) The provisions of sections 1410(h) and 1415(7) of this title, and the workable program requirement in sections 1410(e) and 1451(c) of this title shall not apply to (1) low-rent housing in private accommodations provided under this section, or (2) housing purchased (or in the process of purchase) by the public housing agency for resale to tenants as provided in subsection (g) of this section.

Purchase of structures containing leased dwelling units for purpose of resale to tenants; terms and conditions

(g) To the extent authorized in contracts entered into by the Authority with a public housing agency, such agency may purchase any structure containing one or more dwelling units leased to provide low-rent housing in private accommodations under this section for the purpose of reselling the structure to the tenant or tenants of the structure or to a group of such tenants occupying units aggregating in value at least 80 per centum of the structure's total value. Any such resale shall be made subject to such terms and conditions (including provision for deferment of the required downpayment and for elimination of or adjustments in the required interest payments during a temporary period) as may be necessary to enable the tenants involved to make the purchase without undue financial hardship.

Sept. 1, 1937, c. 896, § 23, as added Aug. 10, 1965, Pub.L. 89–117, Title I, § 103(a), 79 Stat. 455, and amended Nov. 3, 1966, Pub.L. 89–754, Title X, § 1002, 80 Stat. 1284; Aug. 1, 1968, Pub.L. 90–448, Title II, §§ 208, 210, 82 Stat. 504, 505.

References in Text. Upon enactment of this paragraph, referred to in par. (11), means upon enactment of Pub.L. 90–448, which was approved on August 1, 1968.

1968 Amendment. Subsec. (d). Pub.L. 90–448, § 210, inserted parenthetical phrase "(and no limitation not specifically provided for in this section shall be imposed by regulations of the Authority on the types or categories of structures or dwelling units, qualifying under subsection (a) (3) of this section and approved under subsection (c) of this section, which may be so used in any community)."

Subsec. (f). Pub.L. 90–448, § 208(a), inserted provisions making certain provisions of law inapplicable to housing pur-

chased (or in the process of purchase) by the public housing agency for resale to tenants as provided in subsection (g) of this section.

Subsec. (g). Pub.L. 90–448, § 208(b), added subsec. (g).

1966 Amendment. Subsec. (d). Pub.L. 89–754 increased upper limits on term of lease from thirty-six to sixty months.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 89–754, 1966 U.S. Code Cong. and Adm.News, p. 3999. Pub.L. 90–448, 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1422. Penalties; applicability of general penal statutes concerning moneys

All general penal statutes relating to the larceny, embezzlement, or conversion or to the improper handling, retention, use, or disposal of public moneys or property of the United States shall apply to the moneys and property of the Authority and to moneys and properties of the United States entrusted to the Authority.

Sept. 1, 1937, c. 896, § 24, formerly § 22, 50 Stat. 899; renumbered, § 23, July 15, 1949, c. 338, Title III, § 307(h), 63 Stat. 431, renumbered § 24, Aug. 10, 1965, Pub.L. 87–117, Title I, § 103(a), 79 Stat. 455.

§ 1431. Administration representation at non-Federal project sites; reimbursement of expenses

Necessary expenses of providing representatives at the sites of non-Federal projects in connection with the construction of such projects by public housing agencies with aid under this chapter, shall be compensated by such agencies by the payment of fixed fees which in the aggregate will cover the costs of rendering such services, and expenditures for such purpose shall be considered nonadministrative expenses, and funds received from such payments may be used only for the payment of necessary expenses of providing such representatives. Pub.L. 90–121, Title II, § 201, Nov. 3, 1967, 81 Stat. 360.

Similar Provisions. Pub.L. 89–128, Title II, § 201, Aug. 16, 1965, 79 Stat. 542, Pub.L. 89–555, Title II, § 201, Sept. 6, 1966, 80 Stat. 688.

§ 1434. Records; contents; examination and audit

Every contract between the Department of Housing and Urban Development and any person or local body (including any corporation or public or private agency or body) for a loan, advance, grant, or contribution under this chapter, the Housing Act of 1949, as amended, or any other Act shall provide that such person or local body shall keep such records as the Department of Housing and Urban Development shall from time to time prescribe, including records which permit a speedy and effective audit and will fully disclose the amount and the disposition by such person or local body of the proceeds of the loan, advance, grant, or contribution, or any supplement thereto, the capital cost of any construction project for which any such loan, advance, grant, or contribution is made, and the amount of any private or other non-Federal funds used or grants-in-aid made for or in connection with any such project. No mortgage covering new or rehabilitated multifamily housing (as defined in section 1715r of Title 12) shall be insured unless the mortgagor certifies that he will keep such records as are prescribed by the Secretary of Housing and Urban Development at the time of the certification and that they will be kept in such form as to permit a speedy and effective audit. The Department of Housing and Urban Development and the Comptroller General of the United States shall have access to and the right to examine and audit such records. This section shall become effective on the first day after the first full calendar month following the date of approval of the Housing Act of 1961.

As amended May 25, 1967, Pub.L. 90–19, § 10(h), 81 Stat. 23.

1967 Amendment. Pub.L. 90–19, § 10(h)(1)–(4), substituted "Secretary of Housing and Urban Development" for "Federal Housing Commissioner" in the second sentence and "Department of Housing and Urban Development" for "Housing and Home Finance Agency (or any official or constituent thereof)" and "Housing and Home Finance Agency (or such official or constituent thereof)" in the first sentence and for "Housing and Home Finance Agency or any official or constituent agency thereof" in the third sentence, respectively.

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

§ 1435. Access to books, documents, etc., for purpose of audit

Every contract for loans or annual contributions under this chapter shall provide that the Secretary of Housing and Urban Development and the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination, have access to any books, documents, papers, and records of the public housing agency entering into such contract that are pertinent to its operations with respect to financial assistance under this chapter.

As amended May 25, 1967, Pub.L. 90–19, § 10(i), 81 Stat. 23.

1967 Amendment. Pub.L. 90–19 substituted "Secretary of Housing and Urban Development" for "Public Housing Commissioner".

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

§ 1436. Demonstration programs; grants for development

The Secretary of Housing and Urban Development is authorized to enter into contracts to make grants, not exceeding $15,000,000, to public or private bodies or agencies, subject to such terms and conditions as he shall prescribe, for the purposes of developing and demonstrating new or improved means, including the study of self-help in the construction, rehabilitation, and maintenance of housing for low-income persons and families and the methods of selecting, involving, and directing such persons and families in self-help activities, of providing housing for low income persons and families and of demonstrating the types of housing and the means of providing housing that will assist low income persons or families who qualify as handicapped families as defined in section 1701q of Title 12. Advances and progress payments may be made, under any contract to make grants under this section, without regard to the provisions of section 529 of Title 31.

As amended Pub.L. 89–117, Title XI, § 1105, Aug. 10, 1965, 79 Stat. 503; Pub.L. 90–19, § 18(a), May 25, 1967, 81 Stat. 25; Pub.L. 90–448, Title XVII, § 1714(a), Aug. 1, 1968, 82 Stat. 607.

1968 Amendment. Pub.L. 90–448 inserted the phrase ", including the study of self-help in the construction, rehabilitation, and maintenance of housing for low-income persons and families and the methods of selecting, involving, and directing such persons and families in self-help activities,".

1967 Amendment. Pub.L. 90–19 substituted "Secretary of Housing and Urban Development" for "Housing and Home Finance Administrator".

1965 Amendment. Pub.L. 89–117 substituted "$15,000,000" for "$10,000,000".

Report of Self-Help Studies and Demonstrations. Section 1714(b) of Pub.L. 90–448 provided that: "The Secretary of Housing and Urban Development shall make a report to the Congress, within one year after the date of enactment of this Act [Aug. 1, 1968], setting forth the results of the self-help studies and demonstrations carried out under section 207 of the Housing Act of 1961, together with such recommendations as he deems appropriate."

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 90–19, 1967 U.S.Code Cong. and Adm.News, p. 1194; Pub.L. 90–448, 1968 U.S.Code Cong. and Adm.News, p. —.

CHAPTER 8A.—SLUM CLEARANCE, URBAN RENEWAL, AND FARM HOUSING

SUBCHAPTER I. GENERAL PROVISIONS

SUBCHAPTER II.—SLUM CLEARANCE AND URBAN RENEWAL

SUBCHAPTER I.—GENERAL PROVISIONS

§ 1441. Congressional declaration of national housing policy

The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be: (1) private enterprise shall be encouraged to serve as large a part of the total need as it can; (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need; (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life; (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural non-farm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and (5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill. The Department of Housing and Urban Development, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established, and in such manner as will encourage and assist (1) the production of housing of sound standards of design, construction, livability, and size for adequate family life; (2) the reduction of the costs of housing without sacrifice of such sound standards; (3) the use of new designs, materials, techniques, and methods in residential construction, the use of standardized dimensions and methods of assembly of home-building materials and equipment, and the increase of efficiency in residential construction and maintenance; (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities; and (5) the stabilization of the housing industry at a high annual volume of residential construction.

As amended May 25, 1967, Pub.L. 90–19, § 6(a), 81 Stat. 21.

1967 Amendment. Pub.L. 90–19 substituted "The Department of Housing and Urban Development" for "The Housing and Home Finance Agency and its constituent agencies".

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

Supplementary Index to Notes

1a. Construction with other laws

When the Alaska Slum Clearance and Redevelopment Law was enacted in 1951 it was intended to harmonize with and take full advantage of this chapter. Alaska State Housing Authority v. Contento, Alaska 1967, 432 P.2d 117.

3. Declaratory judgment

Action by owner of downtown property for declaratory judgment that various acts of city council and housing and redevelopment authority pertaining to urban renewal were illegal did not present justiciable controversy in view of fact that city at time when action was brought had only entered upon advanced planning preparatory to formulating a general neighborhood renewal plan and had not arrived at a master plan for renewal. Beatty v. Winona Housing and Redevelopment Authority, Minn. 1967, 151 N.W.2d 584.

4. Public benefit

Sections of charter of city of Cleveland dealing with competitive bidding for land no longer needed for public use are inapplicable to urban renewal cases. State ex rel. Allerton Parking Corp. v. City of Cleveland, 1965, 211 N.E.2d 203, 4 Ohio App.2d 57, affirmed 216 N.E.2d 876, 6 Ohio St.2d 165.

Land acquired by city for urban redevelopment was acquired for public use and its resale to private redevelopers under regulations as to use was part of continuing public benefit and was not improper. Id.

§ 1441a. Congressional reaffirmation of national housing goal

The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal, established in the Housing Act of 1949, of the "realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family". The Congress reaffirms this national housing goal and determines that it can be substantially achieved within the next decade by the construction or rehabilitation of twenty-six million housing units, six million of these for low and moderate income families.

Pub.L. 90–448, Title XVI, § 1601, Aug. 1, 1968, 82 Stat. 601.

Codification. Section was enacted as part of the Housing and Urban Development Act of 1968 and not as part of the Housing Act of 1949, which comprises this chapter.

§ 1441b. Plan for elimination of all substandard housing and realization of national housing goal; report of the President to the Congress

Not later than January 15, 1969, the President shall make a report to the Congress setting forth a plan, to be carried out over a period of ten years (June 30, 1968, to June 30, 1978), for the elimination of all substandard housing and the realization of the goal referred to in section 1441a of this title. Such plan shall—

(1) indicate the number of new or rehabilitated housing units which it is anticipated will have to be provided, with or without Government assistance, during each fiscal year of the ten-year period, in order to achieve the objectives of the plan, showing the number of such units which it is anticipated will have to be provided under each of the various Federal programs designed to assist in the provision of housing;

(2) indicate the reduction in the number of occupied substandard housing units which it is anticipated will have to occur during each fiscal year of the ten-year period in order to achieve the objectives of the plan;

(3) provide an estimate of the cost of carrying out the plan for each of the various Federal programs and for each fiscal year during the ten-year period to the extent that such costs will be reflected in the Federal budget;

(4) make recommendations with respect to the legislative and administrative actions necessary or desirable to achieve the objectives of the plan; and

(5) provide such other pertinent data, estimates, and recommendations as the President deems advisable.

Such report shall, in addition, contain a projection of the residential mortgage market needs and prospects during the coming year, including an estimate of the requirements with respect to the availability, need, and flow of mortgage funds (particularly in declining urban and rural areas) during such year, together with such recommendations as may be deemed

ppropriate for encouraging the availability of such funds.
'ub.L. 90–448, Title XVI, § 1602, Aug. 1, 1968, 82 Stat. 601.

Codification. Section was enacted as art of the Housing and Urban Develop- ient Act of 1968 and not as part of the Housing Act of 1949, which comprises this chapter.

§ 1441c. Annual reports of the President to the Congress; contents

On January 15, 1970, and on each succeeding year through 1979, the 'resident shall submit to the Congress a report which shall—

(1) compare the results achieved during the preceding fiscal year for the completion of new or rehabilitating housing units and the reduction in occupied substandard housing with the objectives established for such year under the plan;

(2) if the comparison provided under clause (1) shows a failure to achieve the objectives set for such year, indicate (A) the reasons for such failure; (B) the steps being taken to achieve the objectives of the plan during each of the remaining fiscal years of the ten-year period; and (C) any necessary revision in the objectives established under the plan for each such year;

(3) project residential mortgage market needs and prospects for the coming calendar year including an estimate of the requirements with respect to the availability, need, and flow of mortgage funds (particularly in declining urban and rural areas) during such period, in order to achieve the objectives of the plan;

(4) provide an analysis of the monetary and fiscal policies of the Government for the coming calendar year required to achieve the objectives of the plan and the impact upon the domestic economy of achieving the plan's objectives for such period;

(5) make recommendations with respect to any additional legislative or administrative action which is necessary or desirable to achieve the objectives of the plan; and

(6) provide such other pertinent data, estimates, and recommendations as the President deems advisable.

ub.L. 90–448, Title XVI, § 1603, Aug. 1, 1968, 82 Stat. 602.

Codification. Section was enacted as art of the Housing and Urban Develop- ient Act of 1968 and not as part of the Housing Act of 1949, which comprises this chapter.

§ 1443. Provisions as controlling over other laws

Index to Notes

Construction with other laws

When the Alaska Slum Clearance and edevelopment Law was enacted in 1951 it was intended to harmonize with and take full advantage of this chapter. Alaska State Housing Authority v. Contento, Alaska 1967, 432 P.2d 117.

SUBCHAPTER II.—SLUM CLEARANCE AND URBAN RENEWAL

PART A.—URBAN RENEWAL PROJECTS, DEMOLITION PROGRAMS, AND CODE ENFORCEMENT PROGRAMS

§ 1450. Urban Renewal Fund

Completion of Projects Entered Into rior to Aug. 2, 1954. Section 312 of ct Aug. 2, 1954, as amended by Pub.L.)–19, § 10(a), May 25, 1967, 81 Stat. 22, pro- ided that: "Notwithstanding the amend- ients of this title to title I of the Hous- ig Act of 1949, as amended [this sub- iapter], the Secretary, with respect to any roject covered by any Federal aid contract executed, or prior approval granted, by him under said title I before the effective date of this Act [Aug. 2, 1954], upon request of the local public agency, shall continue to extend financial assistance for the completion of such project in accordance with the provisions of title I in force immediately prior to the effective date of this Act."

§ 1451. Local programs—Local responsibilities considered by Secretary in extending financial assistance

(a) In entering into any contract for advances for surveys, plans, and ther preliminary work for projects under this subchapter or for grants

pursuant to section 1453(d) of this title, the Secretary shall give consideration to the extent to which appropriate local public bodies have undertaken positive programs (through the adoption, modernization administration, and enforcement of housing, zoning, building and other local laws, codes and regulations relating to land use and adequate standards of health, sanitation, and safety for buildings, including the use and occupancy of dwellings) for (1) preventing the spread or recurrence in the community of slums and blighted areas, and (2) encouraging housing cost reductions through the use of appropriate new materials, techniques, and methods in land and residential planning, design, and construction, the increase of efficiency in residential construction, and the elimination of restrictive practices which unnecessarily increase housing costs.

Encouragement of operations of local public agencies

(b) In the administration of this subchapter, the Secretary shall encourage the operations of such local public agencies as are established on a State, or regional (within a State), or unified metropolitan basis or as are established on such other basis as permits such agencies to contribute effectively toward the solution of community development or redevelopment problems on a State, or regional (within a State), or unified metropolitan basis. The Secretary shall particularly encourage the utilization of local public agencies established by the States to operate on a statewide basis in behalf of smaller communities within the State which are undertaking or propose to undertake urban renewal programs whenever that arrangement facilitates the undertaking of an urban renewal program by any such community, or provides an effective solution to community development or redevelopment problems in such communities, and is approved by resolution or ordinance of the governing bodies of the affected communities.

Requirements; exceptions; prohibition against delegation of certain functions; minimum standards housing code

(c) No contract shall be entered into for any loan or capital grant under this subchapter, or for annual contributions or capital grants pursuant to the United States Housing Act of 1937, as amended, for any project or projects not constructed or covered by a contract for annual contributions prior to August 1, 1956, and no mortgage shall be insured, and no commitment to insure a mortgage shall be issued, under section 1715k or section 1715*l*(d)(3) of Title 12, unless (1), there is presented to the Secretary by the locality a workable program for community improvement (which shall include an official plan of action, as it exists from time to time, for effectively dealing with the problem of urban slums and blight within the community and for the establishment and preservation of a well-planned community with well-organized residential neighborhoods of decent homes and suitable living environment for adequate family life) for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation, to provide for the redevelopment of blighted, deteriorated, or slum areas, or to undertake such of the aforesaid activities or other feasible community activities as may be suitably employed to achieve the objectives of such a program, and (2) on the basis of his review of such program, the Secretary determines that such program meets the requirements of this subsection and certifies that the Federal assistance may be made available in such community: *Provided*, That this sentence shall not apply to the insurance of, or commitment to insure, a mortgage under (i) section 1715k of Title 12, if the mortgaged property is in an area referred to in clause (A) (i) of paragraph (1) of subsection (d) of said section, or (ii) section 1715*l* (d) (3) of Title 12 if payments with respect to the mortgaged property are made or are to be made under section 1701s of Title 12, except that no such mortgage shall be insured, and no commitment to in-

sure such a mortgage shall be issued, with respect to property in any community for which a workable program for community improvement was required and in effect at the time a contract for a loan or capital grant was entered into under this subchapter, or a contract for annual contributions or capital grants was entered into pursuant to the United States Housing Act of 1937, unless there is a workable program for community improvement which meets the requirements of this subsection in effect in such community at the time of such insurance or commitment: *Provided further*, That commencing three years after September 2, 1964 or, in the case of an Indian tribe, band, or nation, commencing January 1, 1970, no workable program shall be certified or re-certified unless (A) the locality has had in effect, for at least six months prior to such certification or recertification, a minimum standards housing code, related but not limited to health, sanitation, and occupancy requirements, which is deemed adequate by the Secretary, and (B) the Secretary is satisfied that the locality is carrying out an effective program of enforcement to achieve compliance with such housing code. Notwithstanding any other provision of law, in the case of a contract with an Indian tribe, band, or nation (or a public housing or other public agency for such tribe, band, or nation established under State or tribal law), the workable program and minimum standards housing code, referred to in the preceding sentence, may be presented to the Secretary by such tribe, band, or nation, and it shall be subject to the requirements of law with respect to such program and code only to the extent that such tribe, band, or nation has the legal jurisdiction and power to carry out such requirements.

Facilities for furnishing urban renewal service and assembly of information

(d) The Secretary is authorized to establish facilities (1) for furnishing to communities, at their request, an urban renewal service to assist them in the preparation of a workable program as referred to in the subsection (c) of this section and to provide them with technical and professional assistance for planning and developing local urban renewal programs (including rehabilitation projects requiring no additional assistance under this subchapter or self-liquidating redevelopment projects), and (2) for the assembly, analysis and reporting of information pertaining to such programs.

Workable program requirements

(e) No loan or grant contract may be entered into by the Administrator for an urban renewal project unless he determines that (1) the workable program for community improvement presented by the locality pursuant to subsection (c) of this section is of sufficient scope and content to furnish a basis for evaluation of the need for the urban renewal project; and (2) such project is in accord with the program.

As amended Aug. 10, 1965, Pub.L. 89–117, Title I, § 101(f), Title III, §§ 302(a) (1), (b), 305(b), 79 Stat. 453, 474, 476; Sept. 9, 1965, Pub. L. 89–174, § 7(d), 79 Stat. 670; May 25, 1967, Pub.L. 90–19, § 6(b), (c), 81 Stat. 21; Aug. 1, 1968, Pub.L. 90–448, Title V, § 513, 82 Stat. 525.

References in Text. The United States Housing Act of 1937, as amended, referred to in subsec. (c), is classified to chapter 8 of this title.

1968 Amendment. Subsec. (c). Pub.L. 90–448 inserted the phrase "or, in the case of an Indian tribe, band, or nation, commencing January 1, 1970" in the second proviso.

1967 Amendment. Pub.L. 90–19, § 6(b), substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a)–(e) of this section.

Subsec. (c). Pub.L. 90–19, § 6(c), struck out "to the constituent agencies affected" following "certifies".

1965 Amendments. Subsec. (c). Pub.L. 89–174 repealed the second proviso so that the Secretary could delegate or redelegate authority to approve the workable program of a locality for dealing with its overall problems of slum and blight, certify that Federal assistance to urban renewal work enumerated under subsec. (c) may be made available to a community, and determine that the relocation requirements of section 1455(c) (1) of this title have been met.

Pub.L. 89–117, §§ 101(f), 302(b), 305(b), added cl. (ii) to the first proviso and the sentence permitting the workable program and minimum standards housing

code to be presented to the Administrator by an Indian tribe, band, or nation, and subjecting such program and code to the requirements of law applicable only to the extent that such tribe, band, or nation has the legal jurisdiction and power to carry out such requirements, and substituted "section 105(c) (1)" for "section 105(c)" which for purposes of codification has been changed to "section 1455(c) (1) of this title."

Subsec. (e). Pub.L. 89–117, § 302(a) (1), added subsec. (e).

Effective Date of 1965 Amendments. Amendment of subsec. (c) of this section by Pub.L. 89–174 effective upon expiration of first period of sixty calendar days following Sept. 9, 1965 or on earlier date specified by Executive order, see section 11(a) of Pub.L. 89–174, set out as a note under section 624 of Title 5, Executive Departments and Government Officers and Employees.

Section 302(a) (2) of Pub.L. 89–117 provided that: "The requirements imposed by the amendment made by paragraph (1) [adding subsec. (e) of this section] shall not be applicable to any project which received Federal recognition prior to the date of the enactment of this Act [Aug. 10, 1965]."

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 89–174, 1965 U.S. Code Cong. and Adm.News, p. 3011; Pub. L. 90–19, 1967 U.S.Code Cong. and Adm. News p. 1194; Pub.L. 90–448, 1968 U.S. Code Cong. and Adm.News, p. —.

1. Parties

Those not parties to contract between United States and local governments have no standing to enforce conditions imposed on redevelopment agencies by the United States although those suing would benefit from such enforcement. Sayre v. U. S., D.C.Ohio 1967, 282 F.Supp. 175.

§ 1452. Loans—Temporary and definitive loans; amounts; interest rates; security; repayment

(a) To assist local communities in the elimination of slums and blighted or deteriorated or deteriorating areas, in preventing the spread of slums, blight or deterioration, and in providing maximum opportunity for the redevelopment, rehabilitation, and conservation of such areas by private enterprise, the Secretary may make temporary and definitive loans to local public agencies in accordance with the provisions of this subchapter for the undertaking of urban renewal projects. Such loans (outstanding at any one time) shall be in such amounts not exceeding the estimated expenditures to be made by the local public agency for such purposes, bear interest at such rate (not less than the applicable going Federal rate), be secured in such manner, and be repaid within such period (not exceeding, in the case of definitive loans, forty years from the date of the bonds or other obligations evidencing such loans), as may be deemed advisable by the Secretary. In any case where, in connection with its undertaking and carrying out of an urban renewal project, a local public agency is authorized (under the circumstances in which the temporary loan herein provided is requested) to acquire real property in the urban renewal area, the Secretary, in addition to all other authority under this subchapter and notwithstanding any other provisions of this subchapter, regardless of the stage of development of the urban renewal plan and whether before or after the approval thereof, may make a temporary loan or loans to any such local public agency to finance the acquisition of such real property: *Provided*, That no loan for such purpose shall be made unless (1) the governing body of the locality involved shall have approved by resolution or ordinance the acquisition of real property in the urban renewal area, and (2) either (A) the Secretary shall have determined that such loan is reasonably secured by a first mortgage or other prior lien upon such real property or is otherwise reasonably secured, or (B) the governing body of the locality shall have assumed the responsibility to bear any loss that may arise as the result of such acquisition in the event that the property so acquired is not used for urban renewal purposes because the urban renewal plan for the project is not approved, or is amended to omit any of the acquired property, or is abandoned for any reason: *Provided further*, That the Secretary may, in his discretion and subject to such conditions as he may impose, permit any structure so acquired to be demolished and removed, and may include in any loan authorized by this section the cost of such demolition and removal, together with administrative relocation, and other related costs and payments, if the approval of the local governing body extends to such demolition and removal: *And provided further*, That the loan contract shall provide that the local public agency shall not dispose of such real

property (except in lieu of foreclosure) until the local governing body of the locality involved shall have either approved the urban renewal plan for the project or consented to the disposal of such real property. Notwithstanding any other provision of this subchapter, the Secretary may make a temporary loan, as described in the first two sentences of this subsection, for two or more urban renewal projects being carried out by the same local public agency. The principal amount of any such loan which is outstanding at any one time shall not exceed the estimated expenditures to be made by the local public agency for such projects.

Projects on open or predominantly open land

(b) In connection with any project on land which is open or predominantly open, the Secretary may make temporary loans to municipalities or other public bodies for the provision of public buildings or facilities necessary to serve or support the new uses of such land in the project area. Such temporary loans shall be in such amounts not exceeding the expenditures to be made for such purpose, bear interest at such rate (not less than the applicable going Federal rate), be secured in such manner, and be repaid within such period (not exceeding ten years from the date of the obligations evidencing such loans), as may be deemed advisable by the Secretary.

Renegotiation of loans; supplemental grants; pledge of loan contract; payment of principal and interest; construction of contracts and other obligations; incontestability; full faith and credit

(c) Loans made pursuant to subsection (a) or (b) of this section may be made subject to the condition that, if at any time or times or for any period or periods during the life of the loan contract the local public agency can obtain loan funds from sources other than the Federal Government, it may do so with the consent of the Secretary at such times and for such periods without waiving or surrendering any rights to loan funds under the contract for the remainder of the life of such contract, and, in any such case, the Secretary is authorized to consent to a pledge by the local public agency of the loan contract, and any or all of its rights thereunder, as security for the repayment of the principal of and the interest on the loan funds so obtained from other sources: *Provided*, That, if at any time during the undertaking of the project, the interest rate on such a loan from a source other than the Federal Government is greater than the rate at which funds could be made available under the Federal loan contract, the Secretary may make a supplemental grant to the local public agency in the amount of the difference between the interest cost from such sources and the interest cost at the contract rate, and no part of the amount of any such grant shall be required to be contributed as a part of the local grant-in-aid. In connection with any such pledge of a loan contract, including loan payments thereunder, as security for the repayment of obligations of the local public agency held by other than the Federal Government, the Secretary is authorized to agree to pay, through operations of a paying agent or agents, and to pay or cause to be paid when due, from funds obtained pursuant to subsection (e) of this section, to the holders of such obligations (or to their agents or designees) the principal of and the interest on such obligations, subject to such conditions as the Secretary may determine but without regard to any other condition or requirement. Notwithstanding any other provision of law, any contract or other instrument executed by the Secretary which, by its terms, includes an obligation of the Secretary to make payment pursuant to this subsection shall be construed by all officers of the United States separate and apart from the loan contract and shall be incontestable in the hands of a bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary pursuant to this subsection.

Advances for surveys and plans; repayment; interest rate; application; General Neighborhood Renewal Plans

(d) The Secretary may make advances of funds to local publi agencies for surveys of urban areas to determine whether the under taking of urban renewal projects therein may be feasible and for sur veys and plans for urban renewal projects which may be assisted unde this subchapter, including, but not limited to, (i) plans for carrying ou a program of voluntary repair and rehabilitation of buildings and im provements, (ii) plans for the enforcement of State and local laws, codes and regulations relating to the use of land and the use and occupanc of buildings and improvements, and to the compulsory repair, rehabilita tion, demolition, or removal of buildings and improvements, and (iii) appraisals, title searches, and other preliminary work necessary to pre pare for the acquisition of land in connection with the undertaking o such projects. The contract for any such advance of funds shall b made upon the condition that such advance of funds shall be repaid with interest at not less than the applicable going Federal rate, out o any moneys which become available to the local public agency for the undertaking of the project involved. No contract for any such advance of funds for surveys and plans for urban renewal projects which may be assisted under this subchapter shall be made unless the governing body of the locality involved has by resolution or ordinance approved the undertaking of such surveys and plans and the submission by the local public agency of an application for such advance of funds. Notwithstanding section 1460(h) of this title or the use in any other provision of this subchapter of the term "local public agency" or "local public agencies" the Secretary may make advances of funds under this subsection for surveys and plans for an urban renewal project (including General Neighborhood Renewal Plans as hereinafter defined) to a single local public body which has the authority to undertake and carry out a substantial portion, as determined by the Secretary, of the surveys and plans or the project respecting which such surveys and plans are to be made: *Provided*, That the application for such advances shows, to the satisfaction of the Administrator, that the filing thereof has been approved by the public body or bodies authorized to undertake the other portions of the surveys and plans or of the project which the applicant is not authorized to undertake.

In order to facilitate proper preliminary planning for the attainment of the urban renewal objectives of this subchapter, the Secretary may also make advances of funds (in addition to those authorized above) to local public agencies for the preparation of General Neighborhood Renewal Plans (as herein defined). A General Neighborhood Renewal Plan may be prepared for an area consisting of an urban renewal area or areas, together with any adjoining areas having specially related problems, and which is of such size that the urban renewal activities in the urban renewal area or areas may have to be initiated in stages, consistent with the capacity and resources of the respective local public agency or agencies, over an estimated period of not more than eight years. No contract for advances for the preparation of a General Neighborhood Renewal Plan may be made unless the Secretary has determined that:

(1) in the interest of sound community planning, it is desirable that the urban renewal activities proposed for the area be planned in their entirety;

(2) the local public agency proposes to undertake promptly an urban renewal project embracing at least 10 per centum of such area, upon completion of the General Neighborhood Renewal Plan and the preparation of an urban renewal plan for such project; and

(3) the governing body of the locality has by resolution or ordinance (i) approved the undertaking of the General Neighborhood Renewal Plan and the submission of an application for such advance

and (ii) represented that such plan will be used to the fullest extent feasible as a guide for the provision of public improvements in such area and that the plan will be considered in formulating codes and other regulatory measures affecting property in the area and in undertaking other local governmental activities pertaining to the development, redevelopment, rehabilitation, and conservation of the area.

The contract for any such advance of funds for a General Neighborhood Renewal Plan shall be made upon the condition that such advance shall be repaid, with interest at not less than the applicable going Federal rate, out of any moneys which become available to the local public agency for the undertaking of the first urban renewal project in such area: *Provided*, That in the event of the undertaking of any other project or projects in such area an appropriate allocation of the amount of the advance, with interest, may be effected to the end that each such project may bear its proper allocable part, as determined by the Secretary, of the cost of the General Neighborhood Renewal Plan. As used herein, a General Neighborhood Renewal Plan means a preliminary plan (conforming, in the determination of the governing body of the locality, to the general plan of the locality as a whole and to the workable program of the community meeting the requirements of section 1451 of this title) which outlines the urban renewal activities proposed for the area involved, provides a framework for the preparation of urban renewal plans and indicates generally, to the extent feasible in preliminary planning, the land uses, population density, building coverage, prospective requirements for rehabilitation and improvement of property, and any portions of the area contemplated for clearance and redevelopment.

Amount of funds outstanding for loans

(e) The total amount of loan contracts outstanding at any one time under this subchapter shall not exceed the aggregate of the estimated expenditures to be made by local public agencies as part of the gross project cost of the projects assisted by such contracts. To obtain funds for advance and loan disbursements under this subchapter, the Secretary may issue and have outstanding at any one time notes and obligations for purchase by the Secretary of the Treasury in an amount which shall not, unless authorized by the President exceed $1,000,000,000. For the purpose of establishing unpaid obligations as of a given date against the authorization contained in the preceding sentence, the Secretary shall estimate the maximum amount to be required to be borrowed from the Treasury and outstanding at any one time with respect to loan commitments in effect on such date.

Notes and obligations; form and denomination; maturity date; interest rate; purchase and sale by Treasury; public debt transaction

(f) Notes or other obligations issued by the Secretary under this subchapter shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Secretary issued under this subchapter and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and

sales by the Secretary of the Treasury of such notes or other obligation shall be treated as public debt transactions of the United States.
As amended Aug. 10, 1965, Pub.L. 89–117, Title III, § 303, 79 Stat. 475; May 25, 1967, Pub.L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub.L. 90–448, Title V, § 507(a), 82 Stat. 522.

* * * * * * * * * *

1968 Amendment. Subsec. (c). Pub.L. 90–448 eliminated provisions which related to obtaining loan funds from sources other than the Federal Government at interest rates lower than provided in the loan contract, and inserted proviso permitting the Secretary to make a supplemental grant, if at any time during the undertaking of the project, the interest rate on a loan from a source other than the Federal Government is greater than the rate at which funds could be made available under the Federal loan contract.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a)–(f) of this section.

1965 Amendment. Subsec. (d). Pub.L. 89–117 deleted "for urban renewal areas of such scope that the urban renewal activities therein may have to be carried out in stages, consistent with the capacity and resources of the respective local public agency, over an estimated period of not more than ten years" following "(as herein defined)" in the first sentence of the second paragraph, added the second sentence of the second paragraph, and substituted "urban renewal activities proposed for the area be planned in their entirety" for "urban renewal area be planned for urban renewal purposes in its entirety" in the first numbered paragraph.

Amendment of Loan Contracts Outstanding on August 1, 1968. Section 507(b) of Pub. L. 90–448 provided that: "Loan contracts outstanding on the date of enactment of this section [Aug. 1968] may be amended to incorporate the provisions authorized by the amendments contained in subsection (a) [to subsec. (c) of this section] without regard to the proviso in section 110(g) of the Housing Act of 1949 [section 1460(g) of this title]."

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 90–19, 1967 U.S. Code Cong. and Adm. News p. 119. Pub. L. 90–448, 1968 U.S.Code Cong. and Adm.News, p. —.

Index to Notes

Incontestability of bonds or other obligations 1

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1. Incontestability of bonds or other obligations

The obligation of the United States under a contract or requisition agreement that secures bonds or notes issued by local urban renewal or public housing agency is fully binding under this section and section 1421a of this title even if litigation attacking the authority of the agency or the validity of the bonds or notes is pending at the time of issue, and nothing in the Development of Housing and Urban Development Act, section 6 et seq. of Title 5, requires a different conclusion. 1965, 42 Op.Atty.Gen., November 2.

§ 1452a. Grants for preventing and eliminating slums and urban blight; preferences; reports, summaries, and informational material; aggregate amount; advance or progress payments

(a) The Secretary of Housing and Urban Development is authorized to make grants, subject to such terms and conditions as he shall prescribe, to public bodies (including cities and other political subdivisions) and nonprofit organizations, to assist them in developing, testing, and reporting methods and techniques, and carrying out demonstrations and other activities for the prevention and the elimination of slums and urban blight. In the case of any such grant to a nonprofit organization, the Secretary shall require that the assisted activities and undertakings are not inconsistent with the program of the local public agency. No such grant shall exceed 90 per centum of the cost, as determined or estimated by the Secretary, of such assisted activities or undertakings, but such grant may in addition cover the full cost of writing and publishing the reports on such activities and undertakings. In administering this section, said Secretary shall give preference to those activities and undertakings which in his judgment can reasonably be expected to (1) contribute most significantly to the improvement of methods and techniques for the elimination and prevention of slums and blight, and (2) best serve to guide renewal programs in other communities.

(b) The Secretary is further authorized to pay for the cost of (1) writing and publishing reports on activities and undertakings financed by grants made under this section, as well as reports on similar activities and undertakings, not so financed, which are of significant value in furthering the purposes of this section, and (2) writing and publishing summaries and other informational material on such reports.

c) The aggregate amount of grants made under subsection (a) of section, and other costs incurred pursuant to subsection (b) of this ion, shall not exceed $20,000,000 and shall be payable from the grant ds provided under and authorized by section 1453(b) of this title. Secretary may make advance or progress payments on account of any tract entered into pursuant to this section, notwithstanding the provi- s of section 529 of Title 31.

amended May 25, 1967, Pub.L. 90–19, § 10(a), (c), 81 Stat. 22; Aug. 1968, Pub.L. 90–448, Title XVII, § 1702, 82 Stat. 603.

68 **Amendment.** Subsec. (a). Pub. L. 48, § 1702(a), authorized grants to profit organizations, directed the Sec- ry to require, in the case of any t to a nonprofit organization, that assisted activities and undertakings not inconsistent with the program of local public agency, and increased maximum amount of the grant from thirds to 90 per centum of the cost. bsec. (c). Pub. L. 90–448, § 1702(b), tituted "$20,000,000" for "$10,000.000."

1967 Amendment. Pub.L. 90–19, § 10(a), substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a)–(c) of this section.

Subsec. (a). Pub.L. 90–19, § 10(e), substituted "Secretary of Housing and Urban Development" for "Housing and Home Finance Administrator".

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194. See, also, Pub. L. 90–448, 1968 U.S. Code Cong. and Adm. News, p. —.

1452b. Rehabilitation loans—Considerations

a) The Secretary is authorized, through the utilization of local public private agencies where feasible, to make loans as herein provided to owners and tenants of property to finance the rehabilitation of such perty. No loan shall be made under this section unless—

(1)(A) the property is situated in an urban renewal area or an area in which a program of concentrated code enforcement activity is being carried out pursuant to section 1468 of this title, and the rehabilitation is required to make the property conform to applicable code requirements or to carry out the objectives of the urban renewal plan for the area and, in addition, to generally improve the condition of the property; or

(B)(i) the property is in an area (other than an area described in subparagraph (A)[1] which the governing body of the locality has determined, and so certifies to the Secretary, contains a substantial number of structures in need of rehabilitation, (ii) there is in effect for the locality a workable program meeting the requirements of section 1451(c) of this title, (iii) the property is residential and owner-occupied, (iv) the property is in need of rehabilitation and is in violation of the local minimum housing or similar code, and (v) the area is definitely planned for rehabilitation or concentrated code enforcement within a reasonable time, and the rehabilitation of such property is consistent with the plan for rehabilitation or code enforcement; or

(C)(i) the property has been determined to be uninsurable because of physical hazards after an inspection pursuant to a statewide property insurance plan approved by the Secretary under title XII of the National Housing Act, and (ii) the loan is made to the owner or tenant of the property to finance rehabilitation which the Secretary determines to be necessary to make the property meet reasonable underwriting standards:

(2) the applicant is unable to secure the necessary funds from other sources upon comparable terms and conditions; and

(3) the loan is an acceptable risk taking into consideration the need for the rehabilitation, the security available for the loan, and the ability of the applicant to repay the loan.

twithstanding the preceding provisions of this subsection, no loan with pect to residential property shall be made under this section to any rson whose annual income, as determined pursuant to criteria and pro- dures established by the Secretary, exceeds the limits prescribed by the cretary for occupants of projects financed with below-market interest e mortgages insured (in the area involved) under section 1715*l*(d)

(3) of Title 12: *Provided*, That the provisions of this sentence shall apply to property in the area of an urban renewal project or a code forcement project for which the city or other local public body or age is receiving financial assistance under this subchapter if, prior to Aug 1, 1968, such local public body or agency specifically developed plans such project in reliance upon the availability of loans under this secti

Definitions

(b) For the purposes of this section—

(1) the term "rehabilitation" means the improvement or re of a structure or facilities in connection with a structure, and may clude the provision of such sanitary or other facilities as are requi by applicable codes, the urban renewal plan, or a statewide prope insurance plan to be provided by the owner or tenant of the proper

(2) the term "urban renewal area" means a slum area or a blig ed, deteriorated, or deteriorating area as defined in section 1460 of this title;

(3) the term "tenant" means a person or organization who occupying a structure under a lease having a period to run at time a rehabilitation loan is made under this section of not less t the term of the loan; and

(4) the term "Secretary" means the Secretary of Housing and ban Development.

Limitations

(c) A rehabilitation loan made under this section shall be subject the following limitations:

(1) The loan shall be subject to such terms and conditions as may prescribed by the Secretary.

(2) The term of the loan may not exceed twenty years or three-four of the remaining economic life of the structure after rehabilitation, whi ever is less.

(3) The loan shall bear interest at such rate as the Secretary det mines to be appropriate but not to exceed 3 per centum per annum of amount of the principal outstanding at any time, and the Secretary m prescribe such other charges as he finds necessary, including serv charges and appraisal, inspection, and other fees.

(4) The amount of the loan may not exceed—

(A) in the case of residential property, the amount of a lo which could be insured by the Secretary of Housing and Urban velopment under section 1715k(b) of Title 12: *Provided*, That, wi in the limitations otherwise applicable on the amount of a loan un such section, the loan may exceed the cost of rehabilitation in or to include an amount approved by the Secretary to refinance existi indebtedness secured by such property if such refinancing is necessa to enable the applicant to amortize, with a monthly payment of more than 20 per centum of his average monthly income, such lo and any other indebtedness secured by his property; and

(B) in the case of nonresidential property, whichever of the f lowing is the least: $50,000, or the cost of rehabilitation, or amount which when added to any outstanding indebtedness rela to the property securing the loan creates a total outstanding inde edness that the Secretary determines could be reasonably secured b first mortgage on the property.

(5) A loan shall be secured as determined by the Secretary.

Authorization of appropriations; revolving fund

(d) There is authorized to be appropriated not to exceed $150,000,0 for each fiscal year which shall constitute a revolving fund to be us by the Secretary in carrying out this section. All moneys in su revolving fund shall be available for necessary expenses of servici loans made pursuant to this section, including reimbursement or payme

services and facilities of the Government National Mortgage Associa-
n and of any public or private agency for the servicing of such loans.

Additional functions, powers and duties of Secretary

(e) In the performance of, and with respect to, the functions, powers,
l duties vested in him by this section, the Secretary shall have (in ad-
on to any authority otherwise vested in him) the functions, powers,
l duties set forth in section 1749a of Title 12 (except subsection (c)
).

Use of Federal or local public or private agency or organization as agent of Secretary

(f) The Secretary is authorized to delegate to or use as his agent any
leral or local public or private agency or organization to the extent he
ermines appropriate and desirable to carry out the objectives of this
tion in the area involved.

Rules and regulations; requirements and conditions

(g) The Secretary is authorized to issue such rules and regulations
l impose such requirements and conditions (in addition to those speci-
l in this section) as he determines to be desirable to carry out the ob-
tives of this section, including limitations on the amount of a loan
l restrictions on the use of the property involved.

Termination date

(h) No loan shall be made under the authority of this section after
ne 30, 1973, except pursuant to a contract, commitment, or other ob-
ation entered into pursuant to this section before that date.

amended Pub.L. 89–117, Title III, § 311(e), 312, Aug. 10, 1965, 79
t. 479; Pub.L. 90–19, § 21(b), May 25, 1967, 81 Stat. 25; Pub.L.
–448, Title V, § 509, Title VIII, § 807(b), Aug. 1, 1968, 82 Stat. 523,
4.

So in original. Probably should have close parenthesis.

968 Amendment. Subsec. (a). Pub.L. 90–448, § 509(c), (d) (1), (e), empowered Secretary to make loans if the property is in an area (other than an area scribed in subpar. (A)) which the governing body of the locality has determined contains a substantial number of uctures in need of rehabilitation, there in effect a working program meeting uirements of section 1451(c) of this title the property is residential and owner-occupied, the property is in need of abilitation and is in violation of the al minimum housing or similar code, the area is definitely planned for rehabilitation or concentrated code enforcement within a reasonable time, and the abilitation is consistent with the plan rehabilitation or code enforcement. ditionally authorized loans if the perty has been determined to be uninable because of physical hazards and loan is made to finance rehabilitato make the property meet reasone underwriting standards, prohibited ns with respect to residential property any person whose annual income exds the limits prescribed for occupants projects financed with below-market erest rate mortgages insured under tion 1715*l*(d) (3) of Title 12, and exted from this prohibition property the area of an urban renewal project a code enforcement project for which city or other local public body or ency is receiving financial assistance, prior to August 1, 1968, the local public body or agency specifically developed ns for such project in reliance upon availability of loans.

Subsec. (b) (1). Pub. L. 90–448, § 509(d) included the provision of such sanity or other facilities as are required a statewide property insurance plan.

Subsec. (d). Pub. L. 90–448, § 509(a), substituted "$150,000,000" for "$100,000,000."

Subsec. (d). Pub. L. 90–448, § 807(b), substituted "Government National Mortgage Association" for "Federal National Mortgage Association."

Subsec. (h). Pub. L. 90–448, § 509(b), extended the termination date from October 1, 1969, to June 30, 1973.

1967 Amendment. Pub.L. 90–19, § 21 (b) (1), substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a), (c) (1), (3), (4) (A), (B), (5), and (e)–(g) of this section.

Subsec. (a). Pub.L. 90–19, § 21(b) (2), substituted "Secretary of Housing and Urban Development" for "Housing and Home Finance Administrator".

Subsec. (b) (4). Pub.L. 90–19, § 21(b) (3), substituted definition of "Secretary" meaning the Secretary of Housing and Urban Development for "Administrator" meaning the Housing and Home Finance Administrator.

Subsec. (c) (4) (A). Pub.L. 90–19, § 21 (b) (4), substituted "Secretary of Housing and Urban Development" for "Federal Housing Commissioner".

1965 Amendment. Subsec. (a). Pub.L. 89–117, §§ 311(e), 312(a), inserted "or an area in which a program of concentrated code enforcement activities is being carried out pursuant to section 1468 of this title", and substituted "comparable" for "reasonable".

Subsec. (d). Pub.L. 89–117, § 312(b), substituted "$100,000,000 for each fiscal year" for "$50,000,000", and made all moneys in the revolving fund available for the necessary expenses of servicing loans made pursuant to this section, in-

cluding reimbursement or payment for services and facilities of the Federal National Mortgage Association and of any public or private agency for the servicing of such loans.

Subsec. (h). Pub.L. 89–117, § 312(c), added subsec. (h).

Effective Date of 1968 Amendment. Amendment by Pub. L. 90–448 effective from and after a date, no more than 120 days following Aug. 1, 1968, as established by the Secretary of Housing and ban Development, see section 808 of L. 90–448, set out as a note under sec 1716b of Title 12, Banks and Bank

Legislative History: For legislative tory and purpose of Pub.L. 89–117, 1965 U.S.Code Cong. and Adm.News, 2614. See, also, Pub.L. 90–19, 1967 Code Cong. and Adm. News. p. 1 Pub.L. 90–448, 1968 U.S.Code Cong. Adm. News, p. —.

§ 1453. Grants for urban renewal projects—Authorization; aggreg amount; limitation on grants for individual projects

(a) (1) The Secretary may make capital grants to local public agenc in accordance with the provisions of this subchapter for urban renev projects: *Provided,* That the Secretary shall not make any contract capital grant with respect to a project which consists of open land, exc that he may contract for a grant in an amount not to exceed two-thi of the difference between the proceeds from any land disposed of pursu to section 1457 of this title and the fair value of the land without reg to such section.

(2) The aggregate of such capital grants with respect to all of projects of a local public agency (or of two or more local public agenc in the same municipality) on which contracts for capital grants h been made under this subchapter shall not exceed the total o

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(B) three-fourths of the aggregate net project costs of any su projects which are located in (i) a municipality having a popu tion of fifty thousand or less according to the most recent decenn census, or (ii) a municipality situated in a labor market area whi at the time the contract or contracts involved are entered into or such earlier time as the Secretary may specify in order to av hardship, or at any time after such contract or contracts are ente into and prior to the time the final grant payment has been ma pursuant thereto, is designated as a redevelopment area under t second sentence of section 2504(a) of this title or any other legis tion enacted after August 10, 1965 containing standards for desig tion as a redevelopment area generally comparable to those set fo in the second sentence of section 2504(a) of this title, and

(C) three-fourths of the aggregate net project costs of any such projects (not falling within subparagraph (B)) which the S retary, upon request, may approve on a three-fourths capital gra basis.

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Limitation on aggregate amount of grants; authorization of appropriations; repayment of certain uncollectible loans

(b) The Secretary may, with the approval of the President, cc tract to make grants under this subchapter aggregating not to exce $7,600,000,000, which amount shall be increased by $1,400,000,000 July 1, 1969. In addition to the authority to make grants provided the first sentence of this subsection, the Secretary may contract to ma grants under this subchapter, on or after July 1, 1967, in an amount n to exceed $600,000,000: *Provided,* That the authority to contract to ma grants provided by this sentence shall be exercised only with respect an urban renewal project which is identified and scheduled to be carri out as one of the projects or activities included within an approved co prehensive city demonstration program assisted under the provisions section 3305(c) of this title. Such grants shall not be used for maj long-term capital improvement; shall not exceed two-thirds of the co as determined or estimated by the Secretary, of the project for which t grant is made; and shall be subject to such other terms and conditio as he may prescribe. The Secretary is authorized, notwithstanding t provisions of section 529 of Title 31, to make advance or progress pa

ts on account of any grant contracted to be made pursuant to this ion. The faith of the United States is solemnly pledged to the pay- t of all grants contracted for under this subchapter, and there are ıorized to be appropriated, out of any money in the Treasury not rwise appropriated, the amounts necessary to provide for such pay- ts: *Provided*, That any amounts so appropriated shall also be available repaying to the Secretary of the Treasury, for application to notes of Secretary, the principal amounts of any funds advanced to local pub- agencies under this subchapter which the Secretary determines to be ollectible because of the termination of activities for which such ad- ces were made, together with the interest paid or accrued to the Sec- ry of the Treasury (as determined by him) attributable to notes given he Secretary in connection with such advances, but all such repay- ts shall constitute a charge against the authorization to make con- ts for grants contained in this section: *Provided further*, That no such rmination of the Secretary shall be construed to prejudice the rights he United States with respect to any such advance.

Restriction on financial assistance to localities or local public agencies

c) Notwithstanding any other provision of this or any other Act, if ncial assistance authorized by this subchapter to be made available to cality or local public agency may be made available to any locality or l public agency within the limitations provided in subsection (b) of section and sections 1452(e) and 1456(e) of this title, and the second agraph following the paragraph numbered (6) of section 1460(c) of title, the amount of such financial assistance made available to any lity or local public agency upon submission and processing of proper lication therefor shall not otherwise be restricted except on the basis (1) urgency of need, and (2) feasibility, as determined by the Secre- .

Grants for preparation or completion of community renewal programs; requirements; approval by governing body; submission of application; limitation on amount of grants

d) The Secretary may contract to make grants for the preparation or ıpletion of community renewal programs, which may include, without ıg limited to, (1) the identification of slum areas or blighted, deteri- ted, or deteriorating areas in the community, (2) the measurement of nature and degree of blight and blighting factors within such areas, determination of the financial, relocation, and other resources needed available to renew such areas, (4) the identification of potential proj- areas and, where feasible, types of urban renewal action contemplated hin such areas, and (5) scheduling or programing of urban renewal vities. Such programs shall conform, in the determination of the gov- ing body of the locality, to the general plan of the locality as a whole. Secretary may establish reasonable requirements respecting the scope content of such programs. No contract for a grant pursuant to this section shall be made unless the governing body of the locality involved approved the preparation or completion of the community renewal pro- m and the submission by the local public agency of an application for h a grant. Notwithstanding section 1460(h) of this title or the use in other provision of this subchapter of the term "local public agency" "local public agencies", the Secretary may make grants pursuant to s subsection for the preparation or completion of a community renewal gram to a single local public body authorized to perform the planning rk necessary to such preparation or completion. No grant made pursu- to this subsection shall exceed two-thirds of the cost (as such cost is ermined or estimated by the Secretary) of the preparation or comple- ı of the community renewal program for which such grant is made. amended Aug. 10, 1965, Pub.L. 89–117, Title III, §§ 304, 313(a), 79 t. 475, 479; Nov. 3, 1966, Pub.L. 89–754, Title I, § 113, Title VII, 04, 80 Stat. 1260, 1281; May 25, 1967, Pub.L. 90–19, §§ 6(b), (d),

81 Stat. 21; Aug. 1, 1968, Pub.L. 90–448, Title V, § 502, 506, 82 S
521, 522.

1968 Amendment. Subsec. (a) (1). Pub. L. 90–448, § 506, empowered the Secretary to contract for a grant in an amount not to exceed two-thirds of the difference between the proceeds from any land disposed of pursuant to section 1457 of this title and the fair value of the land without regard to such section.

Subsec. (b). Pub. L. 90–448, § 502, authorized an increase in the aggregate amount of grants by $1,400,000,000 on July 1, 1969, and increased the authority to make grants on or after July 1, 1967, from $250,000,000 to $600,000,000.

1967 Amendment. Pub.L. 90–19, § 6(b), substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) (1) (2) (B) (C) and (b)–(d) of this section.

Subsec. (b). Pub.L. 90–19, § 6(d), substituted "Secretary of the Treasury" for "Secretary" in the last sentence.

1966 Amendment. Subsec. (a) (2) (B). Pub.L. 89–754 inserted "or at any time after such contract or contracts are entered into and prior to the time the final grant payment has been made pursuant thereto," following "to avoid hardships,".

Subsec. (b). Pub.L. 89–754 provided for grant authority, in an amount not to exceed $250,000,000, for urban renewal projects which are part of approved comprehensive city demonstration programs.

1965 Amendment. Subsec. (a)(2)(B). Pub.L. 89–117, § 313(a), inserted "(i)" following "located in", deleted "(one hundred fifty thousand or less in the case of a municipality situated in an area which, at the time the contract or contracts involved are entered into or at such earlier time as the Administrator may specify in order to avoid hardship, is designated as a redevelopment area under the second sentence of section 2504(a) of this title)" preceding "according to the latest", and added cl. (ii).

Subsec. (b). Pub.L. 89–117, § 304, substituted "$4,700,000,000, which amount shall be increased by $675,000,000 on August 10, 1965, by $725,000,000 on July 1, 1966, and by $750,000,000 on July 1 in each of the years 1967 and 1968" for "$4,725,000,000", and deleted the proviso in the first sentence which prescribed the maximum aggregate amount available to make grants for mass transportation d onstration projects.

Effective Date of 1965 Amendm Section 313(b) of Pub.L. 89–117, as am ed by Pub.L. 90–19, § 22(a), May 25, 1 81 Stat. 26, provided that: "The am ment made by subsection (a) [amen subsec. (a) (2) (B) of this section] s apply only with respect to urban ren projects placed under contract for ca grant on or after the date of the en ment of this Act [Aug. 10, 1965], ex that such amendment shall apply with spect to all urban renewal projects in city of Providence, Rhode Island, pl under contract for capital grant du the period Providence was designate a redevelopment area under section of the Area Redevelopment Act [sec 2504(a) of this title] (or at such ea time as the Secretary may specify in der to avoid hardship) and not compl prior to the date of the enactment of Act [Aug. 10, 1965]."

Delegation of Functions. Function the President under subsec. (b) of section delegated to the Housing Home Finance Administrator, see sec 1(3) of Ex.Ord.No.11196, Feb. 2, 1965 F.R. 1171, set out as a note under sec 1701c of Title 12, Banks and Banking

Criteria for Grants for Historic Pre vation. Criteria for grants for hist preservation under urban renewal gram commencing three years after 3, 1966, and comparable to those use establishment of the National Regis see section 605(h) of Pub.L. 89–754, out as a note under section 1500d— this title.

Cross References. Urban mass tr portation research, development, and d onstration projects, unobligated bal of amount available for mass transpo tion demonstration grants under this tion as available for, see section 160 Title 49, Transportation.

Legislative History: For legislative tory and purpose of Pub.L. 89–117, 1965 U.S.Code Cong. and Adm.News 2614. See, also, Pub.L. 89–754, 1966 Code Cong. and Adm.News, p. 3999; L. 90–19, 1967 U.S.Code Cong. and A News, p. 1194; Pub.L. 9–448, 1968 Code Cong. and Adm. News, p. —.

§ 1455. Requirements for loan- or capital-grant contracts

Contracts for loans or capital grants shall be made only with a d authorized local public agency and shall require that—

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Obligations of purchasers, lessees, assignees of property, and Federal agenc

(b) When real property acquired or held by the local public agency connection with the project is sold or leased, the purchasers or lessees their assignees shall be obligated (i) to devote such property to the u specified in the urban renewal plan for the project area; (ii) to be within a reasonable time any improvements on such property required the urban renewal plan; and (iii) to comply with such other conditions the Secretary finds, prior to the execution of the contract for loan or ca tal grant pursuant to this subchapter, are necessary to carry out the p poses of this subchapter: *Provided*, That clause (ii) of this subsect shall not apply to mortgagees and others who acquire an interest in s property as the result of the enforcement of any lien or claim there *And provided further*, That, with respect to any improvements of a t which it is otherwise authorized to undertake, any Federal agency (as fined in section 472(b) of Title 40, and also including the District of

nbia or any agency thereof) is authorized to become obligated in accordce with this subsection, except that clause (ii) of this subsection shall ply to such Federal agency only to the extent that it is authorized (and nds have been made available) to make the improvements involved;

Temporary relocation of individuals and families displaced from urban renewal area; relocation assistance program

(c) (1) There shall be a feasible method for the temporary relocation individuals and families displaced from the urban renewal area, and ere are or are being provided, in the urban renewal area or in other eas not generally less desirable in regard to public utilities and public d commercial facilities and at rents or prices within the financial means the individuals and families displaced from the urban renewal area, cent, safe, and sanitary dwellings equal in number to the number of and ailable to such displaced individuals and families and reasonably acssible to their places of employment. The Secretary shall issue les and regulations to aid in implementing the requirements of this bsection and in otherwise achieving the objectives of this subchapter. ch rules and regulations shall require that there be established, at the rliest practicable time, for each urban renewal project involving the splacement of individuals, families, and business concerns occupying pperty in the urban renewal area, a relocation assistance program which all include such measures, facilities, and services as may be necessary appropriate in order (A) to determine the needs of such individuals, nilies, and business concerns for relocation assistance; (B) to provide formation and assistance to aid in relocation and otherwise minimize e hardships of displacement, including information as to real estate encies, brokers, and boards in or near the urban renewal area which al in residential or business property that might be appropriate for e relocating of displaced individuals, families, and business concerns; d (C) to assure the necessary coordination of relocation activities with ner project activities and other planned or proposed governmental acns in the community which may affect the carrying out of the relocation ogram, particularly planned or proposed low-rent housing projects to constructed in or near the urban renewal area.

(2) As a condition to further assistance after August 10, 1965 with spect to each urban renewal project involving the displacement of lividuals and families, the Secretary shall require, within a reasonle time prior to actual displacement, satisfactory assurance by the al public agency that decent, safe, and sanitary dwellings as required the first sentence of this subsection are available for the relocation each such individual or family.

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Public disclosure by redevelopers

(e) No understanding with respect to, or contract for, the disposition land within an urban renewal area shall be entered into by a local pub agency unless the local public agency shall have first made public, in ch form and manner as may be prescribed by the Secretary, (1) the me of the redeveloper, together with the names of its officers and prinal members, shareholders and investors, and other interested parties,) the redeveloper's estimate of the cost of any residential redevelopment d rehabilitation, and (3) the redeveloper's estimate of rentals and sales ces of any proposed housing involved in such redevelopment and rebilitation: *Provided*, That nothing in this subsection shall constitute a sis for contesting the conveyance of, or title to, such land.

ndard housing units for low and moderate income families or individuals; minimum number of units in projects; waiver of minimum number requirement; report to Congressional Committees

(f) A majority of the housing units provided in each community's al of such approved urban renewal projects as will be redeveloped predominantly residential uses and which receive Federal recognition

after August 1, 1968, shall be standard housing units for low and m erate income families or individuals: *Provided*, That the units in e community's total of such approved urban renewal projects which for low-income families or individuals shall constitute at least 20 centum of the units in such projects, except that the Secretary may wa the requirement of this proviso in any community to the extent that u for low-income families and individuals are not needed. The Secret shall promptly report any waiver under the proviso in the preceding s tence to the Committees on Banking and Currency of the Senate and House of Representatives.

Sewer systems in urban renewal areas

(g) Consideration has been given to development of a sewer syst to serve the urban renewal area which will, to the maximum ext feasible, provide for effective control of storm and sanitary wastes.

As amended Aug. 10, 1965, Pub.L. 89–117, Title III, § 305(a), 79 S 475; Nov. 3, 1966, Pub.L. 89–754, Title VII, §§ 703(a), 706, 80 S 1281; May 25, 1967, Pub.L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 19 Pub.L. 90–448, Title V, § 512, 82 Stat. 524.

1968 Amendment. Subsec. (f). Pub.L. 90–448 substituted provisions requiring a majority of the housing units provided in each community's total of approved projects as will be redeveloped for predominantly residential uses and which receive Federal recognition after August 1, 1968, to be standard housing units for low and moderate income families or individuals, directing that at least 20 per centum of the units shall be for low-income families or individuals, empowering the Secretary to waive the 20 per centum requirement in communities to the extent that units are not needed, and mandating the Secretary to report any such waiver, for provisions which stated that the redevelopment of an urban renewal area, unless for predominantly nonresidential uses, will provide a substantial number of units of standard housing of low and moderate cost and result in marked progress in serving the poor and disadvantaged people living in slum and blighted areas.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (b), (c) (1), (2), and (e) of this section.

1966 Amendment. Subsec. (f). Pub.L. 89–754, § 703(a), added subsec. (f).

Subsec. (g). Pub.L. 89–754, § 706, added subsec. (g).

1965 Amendment. Subsec. (c). Pub.L. 89–117 designated existing provisions as par. (1), inserted "including information as to real estate agencies, brokers, and boards in or near the urban renewal area which deal in residential or business property that might be appropriate for the relocating of displaced individuals, families, and business concerns" in cl. (B), inserted "particularly planned or proposed low-rent housing projects to be constructed in or near the urban renewal area" in cl. (C), and added par. (2).

Effective Date of 1966 Amendment. Section 703(b) of Pub.L. 89–754 provided that: "The amendment made by subsection (a) [adding subsec. (f) of this section] shall apply only in the case of contracts for loans or capital grants which are made with respect to urban renewal projects undertaken pursuant to urban renewal plans approved after the date of the enactment of this Act [Nov. 3, 1966].

Effective Date of 1965 Amendment. Section 305(c) of Pub.L. 89–117 provided that: "The requirements imposed by the amendment made by subsection (a) of this section shall [amending subsec. (c) of this section] not be applicable to any project which received Federal reco tion prior to the date of the enactmen this Act [Aug. 10, 1965]."

Legislative History: For legislative l tory and purpose of Pub.L. 89–117, 1965 U.S.Code Cong. and Adm.News, 2614. See, also, Pub.L. 89–754, 1966 Code Cong. and Adm.News, p. 3999; P L. 90–19, 1967 U.S.Code Cong. and A News, p. 1194; Pub.L. 90–448, 1968 Code Cong. and Adm. News, p. —.

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2. Approval of plan

Adoption of urban redevlopment p affecting zoning and building perm pursuant to state and federal laws, not just an administrative or ministe procedure appropriate to city commiss action by resolution but must be acc plished by ordinance procedures, incl ing a referendum, and commissi adoption of plan was a nullity. Sch v. Vander Roest, Mich. 1968, 158 N.W 479.

Fact that circuit judge found that c commissioners' electoral zones were m apportioned did not, of itself, have eff of vitiating resolution of city commiss approving urban renewal project. Hill Huger, Fla.1965, 171 So.2d 167.

3. Relocation of families

This section, pertaining to relocat payments in condemnation proceedin does not confer jurisdiction on st court to award compensation for remo cost but merely provides for awarding moving expenses when such expense compensable under state law. City Buffalo v. Mollenberg-Betz Mach. Co., S 1966, 279 N.Y.S.2d 842.

5a. Remedies

Issuance of preliminary injunction restrain the Department of Housing Urban Development, its secretary and regional administrator from disburs federal funds for urban renewal proj was warranted by determination t residents of area who brought suit hac probable right to submit written a documentary evidence before eligibility project for federal funds was determir and that there was a probable dan that the right might be defeated unl

the injunction was issued. Powelton Civic Home Owners Ass'n v. Department of Housing and Urban Development, D.C.Pa.1968, 284 F.Supp. 809.

5a. Remedies

Even if housing authority has failed, or has grievously and willfully neglected, to perform some of its legal obligations in construction of massive urban renewal project, proper remedy, except in most extraordinary circumstances, is not sweeping repudiation or disruption of project by court which will undoubtedly seriously affect and irreparably harm public interest, confidence and treasury. Norwalk Core v. Norwalk Redevelopment Agency, D.C.Conn.1967, 42 F.R.D. 617.

Injunction sought by nonprofit associations and individual plaintiffs, complaining of alleged unlawful or unconstitutional act of city housing authority in demolishing houses as part of urban renewal project without relocating displaced families, to stop construction of moderate income housing on almost completed urban renewal project and to order construction of appropriate low-rental housing units on the land was not appropriate relief. Id.

6. Judicial review

Plaintiffs who challenged proposed urban renewal program on ground that it was violative of the Civil Rights Act of 1964, §§ 2000a to 2000d–4 of this title, but who failed to follow procedures established by the administrative agency for presentation of such claims precluded themselves from receiving an agency hearing on their civil rights allegations. Powelton Civic Home Owners Ass'n v. Department of Housing and Urban Development, D.C.Pa.1968, 284 F.Supp. 809.

In determining whether proposed urban redevelopment project complies with the requirements of this subchapter the secretary of the Department of Housing and Urban Development must afford residents of area affected an opportunity to be heard equal to that available to local redevelopment authority. Id.

This chapter requires the secretary of the Department of Housing and Urban Development to afford residents of urban renewal project sites a procedural opportunity to submit written and documentary evidence before he determines the eligibility of the project for federal funds. Id.

7. Persons entitled to bring suit

Persons displaced by city urban renewal project had standing to raise issue that local defendant officials violated provision of this section which requires that contracts for loans or capital grants under program must provide feasible method for temporary relocation of displaced individuals and family. Norwalk CORE v. Norwalk Redevelopment Agency, C.A.Conn.1968, 395 F.2d 920.

Nonprofit corporation representing property owners in area designated for urban renewal and its members did not have standing to attack urban renewal project because of alleged violations of Housing Act of 1949. Green St. Ass'n v. Daley, C.A.Ill.1967, 373 F.2d 1, certiorari denied 87 S.Ct. 2054, 387 U.S. 932, 18 L.Ed.2d 995.

Provision of Civil Rights Act of 1964 prohibiting discrimination under any program or activity receiving federal financial assistance did not give nonprofit corporation organized to protect property interests in area designated for urban renewal or its members standing to sue to enjoin urban renewal project in predominantly Negro neighborhood. Id.

Neither economic injury nor a specific, individual legal right are necessary adjuncts to standing to judicially challenge action of an administrative agency; a plaintiff need only demonstrate that he is an appropriate person to question the agency's alleged failure to protect values specifically recognized by federal law as "in the public interest," and he may then invoke judicial scrutinization of the agency's performance in protecting, or in failing to protect, that specific value and has standing to ask whether the agency action is violative of the public interest. Powelton Civic Home Owners Ass'n v. Department of Housing and Urban Development, D.C.Pa.1968, 284 F.Supp. 809.

Provisions of this subchapter recognizing and protecting the values of rehabilitation, relocation and integrated local planning manifest congressional intent that nonprofit civic organizations representing the citziens who will be displaced by the proposed project are to be considered "aggrieved" by agency action allegedly disregarding their interests, and thus have standing to seek judicial review of administrative action. Id.

Residents of area affected by proposed urban renewal project were a party "aggrieved", within meaning of this subchapter, and thus had standing to obtain judicial review of determinations by the secretary of the Department of Housing and Urban Development. Id.

Residents of area affected by proposed urban renewal program had standing under the "private attorney general" concept to raise issues, including those not personal to them, concerning alleged violations of relocation and other provisions of this subchapter. Id.

Members of public, whether living inside or outside an urban renewal project area, ordinarily have no standing to challenge planning of urban renewal project nor by alleging civil rights violations do they gain standing which they otherwise would not have. Norwalk Core v. Norwalk Redevelopment Agency, D.C. Conn.1967, 42 F.R.D. 617.

Nonprofit associations, composed of low-income Negroes and Puerto Ricans, complaining of alleged unlawful or unconstitutional action of city housing authority in urban renewal project could not seek redress on behalf of members since they themselves were not members of class whose rights they claimed to be asserting. Id.

Nonprofit associations, composed of low-income Negroes and Puerto Ricans, and individual plaintiffs, complaining of alleged unlawful or unconstitutional action of city housing authority in demolishing homes as part of urban renewal program without providing plaintiffs with safe, decent and sanitary relocation sites within their financial means and reasonably proximate to their employment, had no standing to maintain a class action on behalf of persons displaced or to be displaced by authority in consummation of project since no issue of law or fact common to all was presented and authority had statutory obligation to provide relocation. Id.

Whether or not federal statutes or regulations had been violated was of concern only to Housing and Home Finance Administration, and plaintiffs had no standing to object to any alleged violations thereof in action in lieu of prerogative writs to declare null and void contract between defendant town, acting as local public agency, and purchaser for sale of land to purchaser for private redevelopment. Ott v. Town of West New York, 1966, 222 A.2d 541, 92 N.J.Super. 184.

8. State courts

Cases presenting challenges to urban renewal programs are matters for the condemnation proceedings in the state courts if the taking is ostensibly for public purpose, even though violations of federally guaranteed rights are claim-

ed. Green St. Ass'n v. Daley, C.A.Ill. 1967, 373 F.2d 1, certiorari denied 87 S.Ct. 2054, 387 U.S. 932, 18 L.Ed.2d 995.

Claim by Negro resident of area that portion of urban renewal project was merely sham or ruse to accomplish Negro clearance could be determined by state court in condemnation proceeding. Id.

Whether land to be acquired by city in urban renewal project will be devoted to public purpose is more appropriate for state court to make in condemnation proceedings rather than in federal court action to enjoin further action in proposed urban renewal project. Id.

State courts are as firmly bound by constitution of the United States as are federal courts and state courts are proper forum for enforcement of any constitutional rights that may have been violated in eminent domain action with right of ultimate determination in Supreme Court of the United States. Id.

Condemnee seeking compensation for cost of removal of machinery from condemned premises to new location must pursue administrative remedies provided by state or federal statutes. City of Buffalo v. Mollenberg-Betz Mach. Co., Sup.1966, 279 N.Y.S.2d 842.

9. Federal jurisdiction

Allegation that property owners were limited to reading prepared statement, harassed and intimidated, and were denied opportunity to cross-examine witnesses supporting urban renewal project at hearing on urban renewal project did not raise such substantial federal question of due process as would entitle plaintiffs, nonprofit corporation and its members, to enjoin urban renewal project. Green St. Ass'n v. Daley, C.A.Ill. 1967, 373 F.2d 1, certiorari denied 87 S.Ct. 2054, 387 U.S. 932, 18 L.Ed.2d 995.

Only where facts alleged indicate that exercise of eminent domain in urban renewal project is designed solely to deny constitutional rights is power of eminent domain subject to prior scrutiny of federal courts. Id.

10. Judicial review

Where nonprofit corporation organized for protecting and promoting interest of residents in area and individual owners did not allege in suit seeking to enjoin further action in proposed urban renewal project that land being condemned was not being taken for public purpose or that the land was being taken solely to deprive plaintiffs of rights secured to them by equal protection clause, corporation did not state claim which would permit federal judicial review of the program of urban renewal prior to exercise of power of eminent domain. Green St. Ass'n v. Daley, C.A.Ill.1967, 373 F.2d 1, certiorari denied 87 S.Ct. 2054, 387 U.S. 932, 18 L.Ed.2d 995.

Nonprofit organization organized to protect property owners' rights in area designated for urban renewal project could not attack adequacy of hearing on urban renewal project as there is no federal right to judicial review of urban renewal plan. Id.

§ 1456. Administrator's powers and duties—Preparation and submission of annual budget; maintenance and audit of accounts

(a) In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Secretary, notwithstanding the provisions of any other law, shall—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by the Government Corporation Control Act, as amended;

(2) maintain an integral set of accounts which shall be audited annually by the General Accounting Office in accordance with the principles and procedures applicable to commercial transactions as provided by the Government Corporation Control Act, as amended, and no other audit shall be required: *Provided*, That such financial transactions of the Secretary as the making of advances of funds, loans, or grants and vouchers approved by the Secretary in connection with such financial transactions shall be final and conclusive upon all officers of the Government.

Deposit of funds; use of assets and receipts

(b) Funds made available to the Secretary pursuant to the provisions of this subchapter shall be deposited in a checking account or accounts with the Treasurer of the United States. Receipts and assets obtained or held by the Secretary in connection with the performance of his functions under this subchapter shall be available for any of the purposes of this subchapter (except for grants pursuant to section 1453 of this title), and all funds available for carrying out the functions of the Secretary under this subchapter (including appropriations therefor, which are authorized), shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Secretary in connection with the performance of such functions: *Provided*, That necessary expenses of inspections and audits, and of providing representatives at the site, of projects being planned or undertaken by local public agencies pursuant to this subchapter shall be compensated by such agencies by the payment of fixed fees which in the aggregate will cover the costs

of rendering such services, and such expenses shall be considered non-administrative; and for the purpose of providing such inspections and audits and of providing representatives at the sites, the Secretary may utilize any agency and such agency may accept reimbursement or payment for such services from such local public agencies or the Secretary, and credit such amounts to the appropriations or funds against which such charges have been made.

Specific powers, duties, and liabilities

(c) In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Secretary, notwithstanding the provisions of any other law, may—

(1) sue and be sued;

(2) foreclose on any property or commence any action to protect or enforce any right conferred upon him by any law, contract, or other agreement, and bid for and purchase at any foreclosure or any other sale any project or part thereof in connection with which he has made a loan or capital grant pursuant to this subchapter. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, dispose of, and otherwise deal with, such project or part thereof: *Provided*, That any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

* * * * * * * * * *

(7) include in any contract or instrument made pursuant to this subchapter such other covenants, conditions, or provisions (including such covenants, conditions, or provisions as, in the determination of the Secretary, are necessary or desirable to prevent the payment of excessive prices for the acquisition of land in connection with projects assisted under this subchapter) as he may deem necessary to assure that the purposes of this subchapter will be achieved. No provision of this subchapter shall be construed or administered to permit speculation in land holding; and

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(d) Repealed. Pub.L. 89–754, Title X, § 1020(a), Nov. 3, 1966, 80 Stat. 1295.

Limitation on expenditures within one State

(e) Not more than 12½ per centum of the grant funds provided for in this subchapter shall be expended in any one State: *Provided*, That the Secretary, without regard to such limitation, may enter into contracts for grants aggregating not to exceed $100,000,000 (subject to the total authorization provided in section 1453(b) of this title) with local public agencies in States where more than two-thirds of the maximum grants permitted in the respective State under this subsection has been obligated.

* * * * * * * * * *

Construction of hotels and other transient housing

(g) No provision permitting the new construction of hotels or other housing for transient use in the redevelopment of any urban renewal area under this subchapter shall be included in the urban renewal plan unless the community in which the project is located, under regulations prescribed by the Secretary, has caused to be made a competent independent analysis of the local supply of transient housing and as a result thereof has determined that there exists in the area a need for additional units of such housing.

Redevelopment in accordance with urban renewal plan

(h) Notwithstanding any other provision of this subchapter, no contract shall be entered into for any loan or capital grant under this subchapter with any local public agency unless the local public agency establishes, by evidence satisfactory to the Secretary, that any urban renewal project with respect to which such local public agency has received a loan or capital grant under this subchapter has been, or will be, undertaken and carried out in substantial accordance with the urban renewal plan, and any amendments thereto, approved with respect to such project, and the terms of the contract for loan or capital grant covering such project.

Project completion prior to disposition of certain property

(i) Upon a determination by the Secretary that (1) not more than 5 per centum of the total area of land acquired as part of an urban renewal project remains to be disposed of, (2) the local public agency does not expect to be able, due to circumstances beyond its control, to dispose of such land in the near future, (3) all other project activities are completed, and (4) the local public agency has agreed to dispose of or retain such land for uses in accordance with the urban renewal plan, the urban renewal project may be deemed completed and the net project cost may be computed and the capital grant paid.

As amended Aug. 10, 1965, Pub.L. 89–117, Title III, § 306, 79 Stat. 476; Nov. 3, 1966, Pub.L. 89–754, Title X, § 1020(a), 80 Stat. 1295; May 25, 1967, Pub.L. 90–19, § 6(b), (e), 81 Stat. 21; Aug. 1, 1968, Pub.L. 90–448, Title V, § 508(a), 82 Stat. 522.

1968 Amendment. Subsec. (i). Pub.L. 90–448 added subsec. (i).

1967 Amendment. Pub.L. 90–19, § 6(b), substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a)–(c), (c) (2), (7), (e), (g), and (h) of this section.

Subsec. (a) (1)–(3). Pub.L. 90–19, § 6 (e), struck out former par. (1) authorization for appointment of a Director to administer the provisions of this subchapter and to be compensated at rate established for heads of constituent agencies of the Housing and Home Finance Agency and redesignated former pars. (2) and (3) as (1) and (2), respectively.

1966 Amendment. Subsec. (d). Pub.L. 89–754 repealed requirement that urban renewal contracts which exceed $1,000 may be made only after advertising for bids, now covered by section 5 of Title 41, Public Contracts.

1965 Amendment. Subsec. (h) Pub.L. 89–117 added subsec. (h).

Study of Housing and Building Codes, Zoning, Tax Policies, and Development Standards. Section 301 of Pub.L. 89–117, as amended by Pub.L. 90–19, § 22(a), (d), May 25, 1967, 81 Stat. 26, 27; Pub.L. 90–118, Oct. 31, 1967, 81 Stat. 338, provided that:

"(a) The Congress finds that the general welfare of the Nation requires that local authorities be encouraged and aided to prevent slums, blight, and sprawl, preserve natural beauty, and provide for decent, durable housing so that the goal of a decent home and a suitable living environment for every American family may be realized as soon as feasible. The Congress further finds that there is a need to study housing and building codes, zoning, tax policies, and development standards in order to determine how (1) local property owners and private enterprise can be encouraged to serve as large a part as they can of the total housing and building need, and (2) Federal, State, and local governmental assistance can be so directed as to place greater reliance on local property owners and private enterprise and enable them to serve a greater share of the total housing and building need. The Secretary of Housing and Urban Development is therefore directed to study the structure of (1) State and local urban and suburban housing and building laws, standards, codes, and regulations and their impact on housing and building costs, how they can be simplified, improved, and enforced, at the local level, and what methods might be adopted to promote more uniform building codes and the acceptance of technical innovations including new building practices and materials; (2) State and local zoning and land use laws, codes, and regulations, to find ways by which States and localities may improve and utilize them in order to obtain further growth and development; and (3) Federal, State, and local tax policies with respect to their effect on land and property cost and on incentives to build housing and make improvements in existing structures.

"(b) The Administrator shall submit a report based on such study to the President and to the Congress not later than December 31, 1968."

"(c) There are authorized to be appropriated such funds as may be necessary to carry out the purposes of this section. Any funds so appropriated shall remain available until expended."

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 89–754, 1966 U.S. Code Cong and Adm.News, p. 3999; Pub. L. 90–19, 1967 U.S.Code Cong. and Adm. News, p. 1194; Pub.L. 90–448, 1968 U.S. Code Cong. and Adm.News, p. —.

Supplementary Index to Notes

3a. Service of process
There being no special statutory authorization for extraterritorial service on Administrator and Regional Director service of process on those federal officials outside state of Connecticut in suit brought in United States District Court in Connecticut against those officials and others for allowance of an additional claim for relocation expenses was improper and the action as to those federal officials must be dismissed. United Pub. & Printing Corp. v. Horan, D.C.Conn.1967, 268 F.Supp. 948.

4. Persons entitled to bring suit
Statutory directive that no provision for new construction of hotels for transient use shall be included in urban renewal plan unless community has caused to be made competent analysis of local supply of transient housing did not confer on hotel owners standing, either as taxpayers or as persons who might sustain economic loss, to bring action to restrain participation by federal agency in urban renewal plan in which transient housing units competing with hotel were included. Berry v. Housing and Home Finance Agency, C.A.N.Y.1965, 340 F.2d 939.

Even if this subchapter conferred no substantive legal rights on residents of sites affected by urban renewal program, those residents had standing to raise procedural issues concerning propriety of procedures utilized by the secretary of the Department of Housing and Urban Development. Powelton Civic Home Owners Ass'n v. Department of Housing & Urban Development, D.C.Pa.1968, 284 F.Supp. 809.

Statutory directive that no provision for new construction of hotels or other housing for transient use shall be included in an urban renewal plan unless the community has caused to be made a competent analysis of local supply of transient housing was a statutory directive for administrative compliance to insure reasonable guidance and standards from the community but it did not confer upon hotel owners as individuals any right to challenge an adopted urban renewal plan separate from their position as members of the general public. Berry v. Housing and Home Finance Agency, D.C.N.Y.1964, 233 F.Supp. 457, affirmed 340 F.2d 939.

6. Judicial review
In action to recover relocation expenses of integrated business which had been conducted from two separate parcels, one within and the other outside geographical boundary of urban renewal project, issue whether federal agency's refusal to pay that part of relocation expenses relating to area outside urban renewal project was arbitrary and capricious precluded summary judgment. Merge v. Sharott, C.A.Pa.1965, 341 F.2d 989.

Under contract between urban redevelopment authority and federal housing and home finance agency for urban renewal project wherein it was provided that relocation payments be paid to businesses displaced, discretion of federal agency as to amount of relocation expenses was required to be reasonably exercised and full amount of reasonable and necessary moving expenses could not be denied arbitrarily or capriciously or for reasons that evinced a complete disregard of law and facts. Id.

Absence of a specific provision for review in this subchapter is not to be considered evidence of any congressional intent to preclude review. Powelton Civic Home Owners Ass'n v. Department of Housing and Urban Development, D.C. Pa.1968, 284 F.Supp. 809.

This section was designed for the public good and general welfare, and unauthorized shackles of judicial intrusion and review for administrative decisions necessary to accomplish such purposes would be harmful to its intent. Berry v. Housing and Home Finance Agency, D.C.N.Y. 1964, 233 F.Supp. 457, affirmed 340 F.2d 939.

7. Sovereign immunity, effect of
Doctrine of sovereign immunity did not bar suit by residents of area affected by proposed urban renewal project to enjoin the Department of Housing and Urban Development, its secretary and its regional administrator from disbursing federal funds to local redevelopment authority. Powelton Civic Home Owners Ass'n v. Department of Housing and Urban Development, D.C.Pa.1968, 284 F. Supp. 809.

Class action plaintiffs who challenged urban renewal project were entitled to injunctive relief restraining disbursement of federal funds to city redevelopment authority since such injunction was necessary to protect jurisdiction of court and to enable plaintiffs to receive substantial justice. Powelton Civic Home Owners Ass'n v. Department of Housing and Urban Development, D.C.Pa.1968, 284 F.Supp. 809.

§ 1457. Property to be used for public housing or housing for low or moderate income families or individuals

(a) Upon approval of the Secretary and subject to such conditions as he may determine to be in the public interest, any real property held as part of an urban renewal project may be made available to (1) a limited dividend corporation, nonprofit corporation or association, cooperative, or public body or agency or other approved purchaser or lessee, or (2) a purchaser or lessee who would be eligible for a mortgage insured under section 1715*l*(d) (3) or (d) (4), section 1715*l*(h) (1), section 1715z, or section 1715z–1 of Title 12, for purchase or lease at fair value for use by such purchaser or lessee in the provision of new or rehabilitated housing for occupancy by families or individuals of low or moderate income: *Provided*, That when property is made available under clause (1) to an approved purchaser or lessee other than a limited dividend corporation, nonprofit corporation or association, cooperative, or public body or agency, the Secretary shall assure that the benefits of this subsection will go to the occupant of the property rather than to such purchaser or lessee.

(b) When it appears in the public interest that real property acquire as part of an urban renewal project should be used in whole or in pa for a low-rent housing project assisted under the United States Housin Act of 1937, or under a State or local program found by the Secretary t have the same general purposes as the Federal program under such Ac the property shall be made available to the public housing agency unde taking the low-rent housing project at a price equal to its fair value, a determined in accordance with subsection (a) of this section, and suc amount shall be included as part of the development cost of such low-re housing project: *Provided*, That the local contribution in the form of ta exemption or tax remission required by section 1410(h) of this title, o by analogous provisions in legislation authorizing such State or loc program, with respect to the low-rent housing project into which suc property was incorporated on or after September 23, 1959, shall (i covered by a contract which, in the determination of the Secretary c Housing and Urban Development, will assure that such local contributio will be made during the entire period that the project is used as low-re housing within the meaning of such Act, or by provisions found b the Secretary to give equivalent assurance in the case of State or loc programs) be accepted as a local grant-in-aid equal in amount, a determined by the Secretary, to one-half (or one-third in the case of a urban renewal project on a three-fourths capital grant basis) of th difference between the cost of such property (including costs of lan clearance, site improvements, and a share, prorated on an area basis, o administrative, interest, and other project costs) and its sales price, an shall be considered a local grant-in-aid furnished in a form other tha cash within the meaning of section 1460(d) of this title.

As amended May 25, 1967, Pub.L. 90–19, § 6(b), (f), 81 Stat. 21, 22 Aug. 1, 1968, Pub.L. 90–448, Title V, § 505, 82 Stat. 522.

1968 Amendment. Subsec. (a). Pub.L. 90–448 authorized real property to be made available to an approved purchaser or lessee, to a purchaser who would be eligible for a mortgage insured under sections 1715*l*(h) (1), 1715z(j) (1), or 1715z–1 of Title 12, to a lessee who would be eligible for a mortgage insured under sections 1715*l*(d) (3), (4), (h) (1), 1715z (j) (1) or 1715–1 of Title 12, permitted such housing to be occupied by families or individuals of low income, directed the Secretary to assure that the benefits of this subsection will go to the occupant of the property rather than to such purchaser or lessee when property is made available under clause (1) to an approved purchaser or lessee other than a limited dividend corporation, nonprofit corporation or association, cooperativ or public body or agency, and eliminate provisions which related to new or reh bilitated rental or cooperative housin

1967 Amendment. Pub.L. 90–19, § 6(b substituted "Secretary" for "Administra tor" wherever appearing in subsecs. (a and (b) of this section.

Subsec. (b). Pub.L. 90–19, § 6(f), sub stituted "Secretary of Housing and Urba Development" for "Public Housing Com missioner".

Legislative History: For legislative his tory and purpose of Pub.L. 90–19, se 1967 U.S.Code Cong. and Adm.News. 1194. See, also, Pub.L. 90–448, 1968 U.S Code Cong. and Adm.News, p. —.

§ 1458. Disposition of surplus Federal real property; sale at fai market value; disposition of proceeds

The President may at any time in his discretion, transfer, or cause t be transferred, to the Secretary any right, title, or interest held by th Federal Government or any department or agency thereof in any lan (including buildings thereon) which is surplus to the needs of the Gov ernment and which a local public agency certifies will be within the are of a project being planned by it. When such land is sold to the loca public agency by the Secretary, it shall be sold at a price equal to its fai market value, and the proceeds from such sale shall be covered into th Treasury as miscellaneous receipts.

As amended May 25, 1967, Pub.L. 90–19, § 6(b), 81 Stat. 21.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing.

Delegation of Functions. Functions of the President under this section delegated to the Director of the Bureau of the Budget, see section 1(21) of Ex.Ord. No.11230, June 28, 1965, 30 F.R. 8447, se out as a note under section 301 of Titl 3, The President.

Legislative History: For legislative his tory and purpose of Pub.L. 90–19, se 1967 U.S.Code Cong. and Adm.News, 1194.

§ 1459. Protection of labor standards

In order to protect labor standards—

(a) any contract for loan or capital grant pursuant to this subchapter shall contain a provision requiring that not less than the salaries prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development of the project involved and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, shall be paid to all laborers and mechanics, except such laborers or mechanics who are employees of municipalities or other local public bodies, employed in the development of the project involved for work financed in whole or in part with funds made available pursuant to this subchapter; and the Secretary shall require certification as to compliance with the provisions of this paragraph prior to making any payment under such contract; and

(b) the provisions of section 874 of Title 18, and of section 276c of Title 40, shall apply to work financed in whole or in part with funds made available for the development of a project pursuant to this subchapter.

As amended May 25, 1967, Pub.L. 90–19, § 6(b), 81 Stat. 21.

1967 Amendment. Subsec. (a). Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing.

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

§ 1460. Definitions

The following terms shall have the meanings, respectively, ascribed to them below, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular number:

(a) "Urban renewal area" means a slum area or a blighted, deteriorated, or deteriorating area in the locality involved which the Secretary approves as appropriate for an urban renewal project.

(b) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the general plan of the locality as a whole and to the workable program referred to in section 1451 of this title and shall be consistent with definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements; and (2) shall be sufficiently complete to indicate, to the extent required by the Secretary for the making of loans and grants under this subchapter, such land acquisition, historic and architectural preservation, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, and building requirements.

(c) "Urban renewal project" or "project" may include undertakings and activities of a local public agency in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or a program of code enforcement in an urban renewal area, or any combination or part thereof, in accordance with such urban renewal plan. Such undertakings and activities may include—

(1) acquisition of (i) a slum area or a deteriorated or deteriorating area, or (ii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community, or (iii) open

land necessary for sound community growth which is to be developed for predominantly residential uses, or (iv) air rights in an area consisting principally of land in highways, railway or subway tracks, bridge or tunnel entrances, or other similar facilities which have a blighting influence on the surrounding area and over which air rights sites are to be developed for the elimination of such blighting influences and for the provision of housing (and related facilities and uses) designed specifically for, and limited to, families and individuals of low or moderate income or, if the area is found by the local public agency to be unsuitable for use for low or moderate income housing, for use for the development of industrial or educational facilities: *Provided*, That the requirement in subsection (a) of this section that the area be a slum area or a blighted, deteriorated or deteriorating area shall not be applicable in the case of projects under clauses (iii) and (iv) hereof: *Provided further*, That the aggregate amount of capital grants for projects under clause (iv) shall not exceed 5 per centum of the aggregate amount of grants authorized by this subchapter to be contracted for after September 2, 1964;

* * * * * * * * * *

(5) carrying out plans for programs of code enforcement or voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(6) acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, to promote historic and architectural preservation, or to provide land for needed public facilities;

(7) construction of foundations and platforms necessary for the provision on air rights sites of housing (and related facilities and uses) designed specifically for, and limited to, families and individuals of low or moderate income, or construction of foundations and platforms necessary for the provision of air rights sites for the development of industrial or educational facilities;

(8) acquisition and repair or rehabilitation for resale by the local public agency, of structures which are located in the urban renewal area and which, under the urban renewal plan, are to be repaired or rehabilitated for dwelling use or related facilities;

(9) relocation within or outside the project area of structures which will be restored and maintained for architectural or historic purposes; and

(10) restoration of acquired properties of historic or architectural value.

Notwithstanding any other provision of this subchapter, (A) no contract shall be entered into for any loan or capital grant under this subchapter for any project which provides for demolition and removal of buildings and improvements unless the Secretary determines that the objectives of the urban renewal plan could not be achieved through rehabilitation of the project area, and (B) not less than 10 per centum of the aggregate amount of (i) grants authorized to be contracted for under this subchapter by the Housing and Urban Development Act of 1965 and subsequent Acts, and (ii) loans authorized to be made under section 1452b of this title, shall be available for projects assisted with such grants or loans which involve primarily code enforcement and rehabilitation.

For the purposes of this subchapter, the term "project" shall not include (except as provided in paragraphs (7), (8), (9), and (10) above) the construction or improvement of any building, and the term "redevelopment" and derivatives thereof shall mean development as well as redevelopment. For any of the purposes of section 1459 of this title, the term "project" shall not include any donations or provisions made as local grants-in-aid and eligible as such pursuant to clauses (2) and (3) of section 1460(d) of this title.

Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Secretary may extend financial assistance under this subchapter for such a project: *Provided further*, That the aggregate amount of capital grants contracted to be made pursuant to this subchapter with respect to such projects after September 23, 1959 shall not exceed 30 per centum of the aggregate amount of grants authorized by this subchapter to be contracted for after such date. *And provided further*, That the aggregate amount of capital grants made available under this subchapter with respect to such projects after August 10, 1965, may be in an amount not to exceed (in addition to amounts previously available for such projects) 35 per centum of the amount of additional capital grants authorized under this subchapter by the Housing and Urban Development Act of 1965.

In addition to all other powers hereunder vested, where land within the purview of clause (1) (ii) or (1) (iii) of the first paragraph of this subsection (whether it be predominantly residential or nonresidential in character) is to be redeveloped for predominantly nonresidential uses, loans and advances under this subchapter may be extended therefor if the governing body of the local public agency determines that such redevelopment for predominantly nonresidential uses is necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives and to afford maximum opportunity for the redevelopment of the project area by private enterprise: *Provided*, That loans and outstanding advances to any local public agency pursuant to the authorization of this sentence shall not exceed 2½ per centum of the estimated gross project costs of the projects undertaken under other contracts with such local public agency pursuant to this subchapter.

(d) "Local grants-in-aid" shall mean assistance by a State, municipality, or other public body, or (in the case of cash grants or donations of land or other real property) any other entity, in connection with any project on which a contract for capital grant has been made under this subchapter, in the form of (1) cash grants to defray expenditures within the purview of subsection (e) (1) of this section; (2) donations, at cash value, of land or other real property (exclusive of land in streets, alleys, and other public rights-of-way which may be vacated in connection with the project, or of air rights over streets, alleys, and other public rights-of-way) in the urban renewal area, and demolition, removal, or other work or improvements in the urban renewal area, at the cost thereof, of the types described in clauses (2), (3), (7), (9), and (10) of the second sentence of subsection (c) of this section; and (3) the provision, at their cost, of public buildings or other public facilities (other than publicly owned housing and revenue producing public utilities the capital cost of which is wholly financed with local bonds or obligations payable solely out of revenues derived from service charges) which are necessary for carrying out in the area the urban renewal objectives of this subchapter in accordance with the urban renewal plan: *Provided*, That in any case where, in the determination of the Secretary, any park, playground, public building, or other public facility is of direct benefit both to the urban renewal area and to other areas, and the approximate degree of the benefit to such other areas is estimated by the Secretary at 20 per centum or more of the total benefits, the Secretary shall provide that, for the purpose of computing the amount of the local grants-in-aid for the project, there shall be included only such portion of the cost of such facility as the Secretary estimates to be proportionate to the approximate degree of the benefit of such facility to the urban renewal area: *Provided further*,

That any publicly owned facility, the construction of which was be not earlier than three years prior to November 3, 1966, shall be deemed benefit an urban renewal project or projects to the extent of 25 per cent of the total benefits of such facility, or $3,500,000, whichever is less such facility (A) (i) is used, or is to be used, by the public predominar for cultural, exhibition, or civic purposes, or is a city hall or a public saf building, or (ii) is a facility, constructed or rehabilitated by a public u versity, which is or will be devoted to the treatment of physical or men disabilities and illness or to medical research; (B) is located with adjacent to, or in the immediate vicinity of such urban renewal project projects; (C) is found to contribute materially to the objectives of urban renewal plan or plans for such project or projects; and (D) is otherwise eligible as a local grant-in-aid: *And provided further*, That the purpose of computing the amount of local grants-in-aid under t subsection with respect to any project covered by a Federal-aid contr under this subchapter, the estimated cost (as determined by the S retary) of parks, playgrounds, public buildings, or other public facilit may be deemed to be the actual cost thereof if (i) the construction provision thereof is not completed at the time of final disposition of la in the project to be acquired and disposed of under the urban rene plan, and (ii) the Secretary has received assurances satisfactory him that such park, playground, public building, or other public facil will be constructed or completed when needed and within a time prescril by him: *And provided further*, That in any case where a public facil furnished as a local grant-in-aid is financed in whole or in part by spec assessments against real property in the project area acquired by the lo public agency as part of the project, an amount equal to the total spec assessments against such real property (or, in the case of a computat pursuant to the proviso immediately preceding, the estimated amount such total special assessments) shall be deducted from the cost of su facility for the purpose of computing the amount of the local grants-in- for the project. With respect to any demolition or removal work, i provement or facility for which a State, municipality, or other pul body has received or has contracted to receive any grant or subsidy fr the United States, or any agency or instrumentality thereof, the port of the cost thereof defrayed or estimated by the Secretary to be frayed with such subsidy or grant shall not be eligible for inclusion a local grant-in-aid.

Notwithstanding any other provision of this subsection, no donation provision of a public improvement or public facility of a type fall within the purview of this subsection shall be deemed to be ineligible a local grant-in-aid for any project solely on the basis that the construct of such improvement or facility was commenced without notification the Secretary or prior to Federal recognition of such project, if su construction was commenced not more than three years prior to authorization by the Secretary of a contract for loan or capital grant the project.

Where a project in any municipality includes an area affected by underground mine fire or by a coal mine subsidence and where it is n essary in such project to remove any underlying coal deposits in or to stabilize the soil or to control the underground mine fire, then a royalties received by the project from the removal and sale of such c deposits shall be credited to the project as a local grant-in-aid made such municipality.

(e) "Gross project cost" shall comprise (1) the amount of the expen tures by the local public agency with respect to any and all undertaki necessary to carry out the project (including the payment of carryi charges, but not beyond the point where the project is completed), a (2) the amount of such local grants-in-aid as are furnished in forms otl than cash. There may be included as part of the gross project cost, un any contract for loan or grant heretofore or hereafter executed un

is subchapter, with respect to moneys of the local public agency which e actually expended and outstanding for undertakings (other than in ie form of local grants-in-aid) necessary to carry out the project, in the sence of carrying charges on such moneys, an amount in lieu of carry- g charges which might otherwise have been payable thereon for the riod such moneys are expended and outstanding but not beyond the int where the project is completed, computed for each six-month period portion thereof, at an interest rate to be determined by the Secretary ter taking into consideration for each preceding six-month period the erage interest rate borne by any obligations of local public agencies for ort-term funds obtained from sources other than the Federal Govern- ent in the manner provided in section 1452(c) of this title: *Provided*, hat such amount may be computed on the net total of all such moneys of e local public agency remaining expended and outstanding, less other oneys received from the project undertaken in excess of project expendi- res, in all projects of the local public agency under this subchapter, and located, as the Secretary may determine, to each of such projects. With spect to a project for which a contract for capital grant has been exe- ted on a three-fourths basis pursuant to section 1453(a) (2) (C) of is title, gross project cost shall include, in lieu of the amount specified clause (1) above, the amount of the expenditures by the local public gency with respect to the following undertakings and activities necessary carry out such project:

(i) acquisition of land (but only to the extent of the consideration paid to the owner and not title, appraisal, negotiating, legal, or any other expenditures of the local public agency incidental to acquiring land), disposition of land, staff services in connection with programs of code enforcement and voluntary rehabilitation and repair (including community organization), demolition and removal of buildings and improvements, and site preparation and improvements, all as provided in paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), and (10) of subsection (c) of this section; and

(ii) the payment of carrying charges related to the undertakings in clause (i) (including amounts in lieu of carrying charges as determined above), exclusive of taxes and payments in lieu of taxes, but not beyond the point where such project is completed;

t not the cost of any other undertakings and activities (including, but ithout being limited to, the cost of surveys and plans, legal services of y kind, and all administrative and overhead expenses of the local public gency) with respect to such project. Where real property in the project ea is acquired and is owned as part of the project by the local public gency and such property is not subject to ad valorem taxes by reason of s ownership by the local public agency and payments in lieu of taxes are t made on account of such property, there may (with respect to any oject for which a contract of Federal assistance under this subchapter is force or is hereafter executed, other than a project on which a contract r capital grant is made on a three-fourths basis pursuant to section 1453 a) (2) (C) of this title) be included, at the discretion of the Secretary, gross project cost an amount equal to the ad valorem taxes which would ve been levied upon such property if it had been subject to ad valorem xes, but in all cases prorated for the period during which such property owned by the local public agency as part of the project, and such nount shall also be considered a cash local grant-in-aid within the pur- ew of subsection (d) of this section. Such amount, and the amount of xes or payments in lieu of taxes included in gross project cost, shall be bject to the approval of the Secretary and such rules, regulations, lim- ations, and conditions as he may prescribe.

Where a project includes the acquisition of property which has been maged because of the collapse or subsidence of underlying coal mines, underground mine fires, and the property is to be acquired from an dividual, family, business concern, or nonprofit organization which was

the owner of such property at the time the damage first occurred, amount otherwise allowable as the acquisition price of such property s be increased by an amount equal to so much of any diminution in the va of such property as is determined to be reasonably attributable to s damage and to represent an otherwise uncompensated and (but for s acquisition) uncompensable loss actually sustained by such owner.

(f) "Net project cost" shall mean the difference between the gi project cost and the aggregate of (1) the total sales prices of all land other property sold, and (2) the total capital values (i) imputed, o basis approved by the Secretary, to all land or other property leased, (ii) used as a basis for determining the amounts to be transferred to project from other funds of the local public agency to compensate for land or other property retained by it for use in accordance with the uri renewal plan or for subsequent disposition or retention as provided un section 1456(i) of this title.

(g) "Going Federal rate" means (with respect to any contract fo loan or advance entered into after the first annual rate has been specif as provided in this sentence) the annual rate of interest which the Sec tary of the Treasury shall specify as applicable to the six-month per (beginning with the six-month period ending December 31, 1953) dur which the contract for loan or advance under this subchapter is auth ized by the Secretary, which applicable rate for each six-month per shall be determined by the Secretary of the Treasury by estimating average yield to maturity, on the basis of daily closing market bid quo tions or prices during the month of May or the month of November, the case may be, next preceding such six-month period, on all outstand marketable obligations of the United States having a maturity date of teen or more years from the first day of such month of May or Novemb and by adjusting such estimated average annual yield to the near one-eighth of 1 per centum. Any contract for a loan or advance, auth ized by the Secretary after September 2, 1964, shall provide for a sin interest rate which shall be applicable also to future amendments of contract which provide additional funds thereunder, and shall furth provide for a periodic revision of the interest rate on the balance o standing or to be outstanding on such loan or advance based on the goi Federal rate on the date of such revision: *Provided*, That any contra for a loan or advance authorized prior to September 2, 1964 shall amended (with the first amendment to such contract authorized af September 2, 1964) to provide for such a single interest rate (based the going Federal rate at the time such amendment is authorized) and f periodic revision thereof.

* * * * * * * * * *

(j) "Secretary" means the Secretary of Housing and Urban Develo ment.

(k) "Federal recognition" means execution of any contract for fina cial assistance under this subchapter or concurrence by the Secretary the commencement, without such assistance, of surveys and plans.

As amended Aug. 10, 1965, Pub.L. 89–117, Title III, §§ 307–309, 310(a 311(b), 314(a), 79 Stat. 476–479; Nov. 3, 1966, Pub.L. 89–754, Ti VI, §§ 601, 602, Title VII, §§ 701, 702, 80 Stat. 1278, 1280, 1281; M 25, 1967, Pub.L. 90–19, § 6(b), (g), 80 Stat. 21, 22; Aug. 1, 1968, Pu L. 90–448, Title V, §§ 504, 508(b), 511, Title XVII, § 1722(a)–(c), Stat. 521, 523, 524, 610.

References in Text. The Housing and Urban Development Act of 1965, referred to in subsec. (c), is Pub.L. 89–117. For classification of the Act, see the Short Title Note set out under section 1749aa of Title 12, Banks and Banking.

1968 Amendment. Subsec. (c). Pub.L. 90–448, § 1722(a), inserted paragraph (10) in the parenthetical exception in the definition of project.

Subsec. (c) (1). Pub.L. 90–448, § 511(a) substituted "for use for the development of industrial or educational facilitie for "for use for industrial developme in cl. (iv).

Subsec. (c) (7). Pub.L. 90–448, 511(b), substituted "for the developme of industrial or educational facilitie for "for industrial development."

Subsec. (c) (8). Pub.L. 90–448, § 5 eliminated provisions which permitt acquisition and repair or rehabilitati for guidance purposes, and which pr hibited the local public agency to

e in any urban renewal area struc-
s which contain or will contain more
one hundred dwelling units, or 5
centum of the total number of dwell-
units in such area which are to be
ired or rehabilitated, whichever is
lesser.

ubsec. (d). Pub.L. 90–448, § 1722(b), rted a reference to paragraph (7) of second sentence of subsection (c) of section.

ubsec. (e). Pub.L. 90–448, § 1722(c), rted a reference to paragraph (10) of section (c) of this section in cl. (i).

ubsec. (f). Pub.L. 90–448, § 508(b), in-ed phrase "or for subsequent disposi- or retention as provided under sec- 1456(i) of this title."

67 Amendment. Pub.L. 90–19, § 6(b), stituted "Secretary" for "Adminis-or" wherever appearing in subsecs. (b), following (c) (10), (d)–(g), and of this section.

ubsec. (j). Pub.L. 90–19, § 6(g), sub-ited definition of "Secretary" mean- the Secretary of Housing and Urban elopment for "Administrator" mean- the Housing and Home Finance Ad-istrator.

66 Amendment. Subsec. (b). Pub.L. 54, § 601(a), inserted "historic and itectural preservation," following d acquisition,".

ubsec. (c) (1). Pub.L. 89–754, § 702 inserted in cl. (iv) provision, if area ound by local public agency to be uitable for use for low or moderate me housing, for use for industrial elopment.

ubsec. (c) (6). Pub. L. 89–754, § 601 inserted provision for promotion of oric and architectural preservation.

ubsec. (c) (7). Pub.L. 89–754, § 702 inserted provision for construction foundations and platforms necessary provision of air rights sites for in-trial development.

ubsec. (c) (9). Pub.L. 89–754, § 601 substituted "relocation within or side the project area of structures ch will be restored and maintained for itectural or historic purposes" for ocating within the project area a ucture which the local public agency ermines to be of historic value and ch will be disposed of to a public y or a private nonprofit organization ch will renovate and maintain such ucture for historic purposes", now also ered in part by cl. (10) of this subsec-i.

ubsec. (c) (10). Pub.L. 89–754, § 601 added cl. (10).

ubsec. (d). Pub.L. 89–754, §§ 602, 701, uded in cl. (2) references to cls. (9) (10) of second sentence of subsec. of this section, and authorized the retary of Housing and Urban De-opment to count as a local grant-in-aid lit 25 percent of expenditures for a blicly owned facility, the construction which was begun not earlier than three years before Nov. 3, 1966, if such facility is to be used for cultural, exhibition, civic, or municipal purposes, is in or near the urban renewal project, contributes materially to the objectives of the urban renewal plan and is not otherwise eligible as a local grant-in-aid, respectively.

1965 Amendment. Subsec. (c). Pub.L. 89–117, §§ 307, 308, 309(a), 311(b), deleted "or a program of code enforcement in an urban renewal area" preceding "or any combination" in the opening paragraph, struck out from par. (5) the proviso which prohibited programs of code enforcement to be included as part of urban renewal projects unless the locality agrees to increase its total expenditures for code enforcement, added par. (9), inserted "(A)" before "no contract" and added cl. (B) to the first unnumbered paragraph following the numbered paragraphs, substituted "paragraphs (7), (8), and (9)" for "paragraphs (7) and (8)" in the second unnumbered paragraph following the numbered paragraphs, and added the third proviso to the third unnumbered paragraph following the numbered paragraphs.

Subsec. (d). Pub.L. 89–117, § 314(a), added the last paragraph requiring local grant-in-aid credit for certain oil royalties.

Subsec. (e). Pub.L. 89–117, §§ 309(b), 310(a), inserted "staff services in connection with programs of code enforcement and voluntary rehabilitation and repair (including community organization)", and substituted "paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9) of subsection (c) of this section" for "paragraphs (1), (2), (3), (4), (6), (7), and (8) of subsection (c) of this section."

Amendment of Contracts to Reflect 1965 Amendment. Section 314(b) of Pub. L. 89–117 provided that: "Any contract under title I of the Housing Act of 1949 [this subchapter] executed prior to the date of the enactment of this Act [Aug. 10, 1965] shall, at the request of the municipality involved, be amended to reflect the amendment made by subsection (a) [amending subsec. (d) of this section]."

Amendment of Contracts Executed Prior to 1965 Amendment. Section 310(b) of Pub.L. 89–117 provided that: "Any contract for a capital grant under title I of the Housing Act of 1949 [this subchapter], executed prior to the date of the enactment of this Act [Aug. 10, 1965], may be amended to incorporate the provisions of subsection (a) [amending subsec. (e) of this section] as to costs incurred on or after the date of the enactment of this Act [Aug. 10, 1965]."

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 89–754, 1966 U.S. Code Cong. and Adm.News, p. 3999; Pub. L. 90–19, 1967 U.S.Code Cong. and Adm. News, p. 1194; Pub.L. 90–448, 1968 U.S. Code Cong. and Adm.News, p. —.

§ 1462. Disaster areas; urban renewal assistance; nonapplicability certain requirements

Where the local governing body certifies, and the Secretary finds, that urban area is in need of redevelopment or rehabilitation as a result of lood, fire, hurricane, earthquake, storm, or other catastrophe which the esident, pursuant to section 1855a(a) of this title, has determined to a major disaster, or which the Secretary has determined is in need of ch redevelopment or rehabilitation as a result of a riot or civil disorder, is authorized to extend financial assistance under this subchapter for

an urban renewal project with respect to such area without regard to th following:

(1) the "workable program" requirement in section 1451(c) this title, except that any contract for temporary loan or capital gra pursuant to this section shall obligate the local public agency comply with the "workable program" requirement in section 1451(c of this title by a future date determined to be reasonable by the Se retary and specified in such contract;

(2) the requirements in section 1455(a) (iii) and section 14 (b) (1) of this title that the urban renewal plan conform to a ge eral plan of the locality as a whole and to the workable progra referred to in section 1451(c) of this title;

(3) the "relocation" requirements in section 1455(c) of this titl *Provided*, That the Secretary finds that the local public agency h presented a plan for the encouragement, to the maximum extent fea ible, of the provision of dwellings suitable for the needs of famili displaced by the catastrophe or by redevelopment or rehabilitati activities;

(4) the "public hearing" requirement in section 1455(d) of th title;

(5) the requirements in sections 1452 and 1460 of this title th the urban renewal area be a slum area or a blighted, deteriorate or deteriorating area; and

(6) the requirements in section 1460 of this title with respect the predominantly residential character or predominantly resident re-use of urban renewal areas.

In the preparation of the urban renewal plan with respect to a proj aided under this section, the local public agency shall give due regard the removal or relocation of dwellings from the site of recurring floods other recurring catastrophes in the project area.

As amended May 25, 1967, Pub.L. 90–19, § 6(b), 81 Stat. 21; Aug. 1968, Pub.L. 90–448, Title XI, § 1106(c), 82 Stat. 567.

1968 Amendment. Pub.L. 90–448 authorized the Secretary to extend financial assistance in an area which he has determined is in need of redevelopment or rehabilitation as a result of a riot or civil disorder.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in the introduct text and pars. (1), (3) of this sectio

Legislative History: For legislative h tory and purpose of Pub.L. 90–19, 1967 U.S.Code Cong. and Adm.News, 1194. See, also, Pub.L. 90–448, 1968 Code Cong. and Adm.News, p. —.

§ 1463. Financial assistance for urban renewal projects in areas volving colleges, universities, or hospitals—Authorization; local grant-aid

(a) In any case where an educational institution or a hospital is loca in or near an urban renewal project area and the governing body of locality determines that, in addition to the elimination of slums and bli from such area, the undertaking of an urban renewal project in such a will further promote the public welfare and the proper development of community (1) by making land in such area available for dispositi for uses in accordance with the urban renewal plan, to such educatio institution or hospital for redevelopment in accordance with the use uses specified in the urban renewal plan, (2) by providing, through redevelopment of the area in accordance with the urban renewal pla cohesive neighborhood environment compatible with the functions needs of such educational institution or hospital, or (3) by any combi tion of the foregoing, the Secretary is authorized to extend finan assistance under this subchapter for an urban renewal project in s area without regard to the requirements in section 1460 of this title w respect to the predominantly residential character or predominantly r dential re-use of urban renewal areas. The aggregate expenditures m by any such institution or hospital (directly or through a private rede

pment corporation or municipal or other public corporation) for the cquisition within, adjacent to, or in the immediate vicinity of the project rea, of land, buildings, and structures to be redeveloped or rehabilitated y such institution for educational uses or by such hospital for hospital ses in accordance with the urban renewal plan (or with a development lan proposed by such institution, hospital, or corporation, found acceptable by the Secretary after considering the standards specified n section 1460(b) of this title, and approved under State or local law fter public hearing) and for the demolition of such buildings and structures if, pursuant to such urban renewal or development plan, the land is o be cleared and redeveloped, and for the relocation of occupants from uildings and structures to be demolished or rehabilitated, as certified y such institution or hospital to the local public agency and approved by he Secretary, shall be a local grant-in-aid in connection with such rban renewal project: *Provided*, That no such expenditure shall be eligible s a local grant-in-aid in any case where the property involved is acquired y such educational institution or hospital from a local public agency hich, in connection with its acquisition or disposition of such property, as received, or contracted to receive, a capital grant pursuant to this subhapter: *Provided further*, That no such expenditure shall be deemed ineligible as a local grant-in-aid in connection with an urban renewal roject, to the extent that the expenditure is otherwise eligible, if the facilities, land, buildings, or structures with respect to which the expenditure made are located within one mile of the project.

Expenditures by educational institutions and hospitals; eligibility as a local grant-in-aid

(b) No expenditure made by any educational institution or hospital, s provided in subsection (a) of this section shall be deemed ineligible as local grant-in-aid (1) in connection with any urban renewal project if ade not more than seven years prior to the authorization by the Secretary of a contract for a loan or capital grant for such project, or (2) in nnection with any such project for which the Secretary, prior to September 25, 1963, has authorized a loan or capital grant contract if made ot more than five years prior to the submission of an application for nancial assistance under this subchapter for such urban renewal project. s amended Nov. 3, 1966, Pub.L. 89–754, Title VII, § 705, 80 Stat. 1281; ay 25, 1967, Pub.L. 90–19, § 6(b), 81 Stat. 21.

* * * * * * * * * *

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) and (b) of this section.

1966 Amendment. Subsec. (a). Pub.L. 89–754 authorized expenditures for facilities, land, buildings, or structures located within one mile of the project.

Legislative History: For legislative history and purpose of Pub.L. 89–754, see 1966 U.S.Code Cong. and Adm. News, p. 2579. See, also, Pub.L. 90–19, 1967 U.S. Code Cong. and Adm.News, p. 1194.

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Construction

Concerted effort for renewal and expansion of hospital and medical care centers through urban renewal projects was a public service and is in accord with government's objective to promote general welfare as stated in U.S.C.A.Const. Preamble. Ellis v. City of Grand Rapids, D.C.Mich.1966, 257 F.Supp. 564.

2. Purpose

That hospital's buildings which were considered in determining whether area was blighted but excluded from condemnation were scheduled to be cleared and redeveloped by hospital if chosen as redeveloper of urban renewal project was kind of result contemplated by Congress under this chapter. Ellis v. City of Grand Rapids, D.C.Mich.1966, 257 F.Supp. 564.

3. Public interest and welfare

Under this chapter it is in the public interest to permit money spent for land acquisition and clearance by an educational institution or hospital located in or near the urban renewal project area to be a part of the general urban renewal plan, if the governing body of the locality determines that such a situation will promote the general welfare. Ellis v. City of Grand Rapids, D.C.Mich.1966, 257 F.Supp. 564.

4. Hospitals

Hospital care provided by public, private, and private sectarian nonprofit institutions is a public use with an overriding public interest, and aid to such institutions may properly be given by government. Ellis v. City of Grand Rapids, D.C.Mich.1966, 257 F.Supp. 564.

That nonprofit, church affiliated hospital tendered an offer to become a re-

developer of part of proposed urban renewal project and that city submitted its plans and hospital's plans to renewal officials did not commit city to accept hospital as principal redeveloper and did not violate statute which provided for free and open competitive bidding between potential redevelopers. Id.

Participation by a sectarian hospital as a redeveloper in an urban renewal project is not unconstitutional. Id.

§ 1464. Redevelopment areas—Urban renewal assistance

(a) Whenever the Secretary of Commerce certifies to the Secretary (1) that any county, city, or other municipality (in this section referred to as a "municipality") is situated in an area designated under section 5 of the Area Redevelopment Act as a redevelopment area, and (2) that there is a reasonable probability that with assistance provided under such Act and other undertakings the area will be able to achieve more than temporary improvement in its economy, the Secretary is authorized to provide financial assistance to a local public agency in any such municipality under this subchapter and the provisions of this section.

Nonapplicability of certain requirements

(b) Subject to the provisions of subsection (e) of this section, the Secretary may provide such financial assistance under this section without regard to the requirement or limitations of section 1460(c) of this title that the project area be predominantly residential in character or be redeveloped for predominantly residential uses under the urban renewal plan, and without regard to any of the limitations of that section on the undertaking of projects for predominantly nonresidential uses.

* * * * * * * * * *

Completion of projects notwithstanding termination of area status

(d) Following the execution of any contract for financial assistance under this section with respect to any project, the Secretary may exercise the authority vested in him under this section as well as other provisions of this subchapter for the completion of such projects, notwithstanding any determination made after the execution of such contract that the area in which the project is located is no longer a redevelopment area under the Area Redevelopment Act.

As amended May 25, 1967, Pub.L. 90–19, § 6(b), 81 Stat. 21.

* * * * * * * * * *

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a), (b), and (d) of this section.

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1197.

§ 1465. Relocation

* * * * * * * * * *

Payments to business concerns or nonprofit organizations; considerations; maximum amounts

(b) A local public agency may pay to any displaced business concern or nonprofit organization—

* * * * * * * * * *

(2) an additional $2,500 in the case of a private business concern with average annual net earnings of less than $10,000 per year which (A) was doing business in a location in the urban renewal area on the date of local approval of the urban renewal plan (or of acquisition of real property under the third sentence of section 1452(a) of this title), (B) is displaced on or after January 27, 1964, and (C) is not part of an enterprise having establishments outside the urban renewal area.

* * * * * * * * * *

Payments to individuals and families; considerations; computation of amount; maximum amounts; restrictions

(c) (1) A local public agency may pay to any displaced individual or family his or its reasonable and necessary moving expenses and any actual

direct losses of property (which are incurred on and after August 7, 1956, and for which reimbursement or compensation is not otherwise made): *Provided*, That such payment shall not exceed $200: *And provided further*, That the Secretary may authorize payment to individuals and families of fixed amounts (not to exceed $200 in any case) in lieu of their respective reasonable and necessary moving expenses and actual direct losses of property.

(2) In addition to any amount under paragraph (1), a local public agency may pay to or on behalf of any displaced family, displaced individual sixty-two years of age or over, or displaced handicapped individual, monthly payments over a period not to exceed twenty-four months in an amount not to exceed $500 in the first twelve months and $500 in the second twelve months to assist such displaced family or individual to secure a decent, safe, and sanitary dwelling. The additional payment shall be an amount which, when added to 20 per centum of the annual income of the displaced individual or family at the time of displacement, equals the average rental required, for a 12-month period, for such a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the displaced individual or family (in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities) or a dwelling unit assisted under section 1701s of Title 12: *Provided*, That such payment shall be made only to an individual or family who is unable to secure a dwelling unit in a low-rent housing project assisted under the United States Housing Act of 1937, or under a State or local program found by the Secretary to have the same general purposes as the Federal program under such Act: *Provided further*, That additional payments under this paragraph may be paid on a lump sum or other than monthly basis in cases in which the small size of the payments that would otherwise be required do not warrant a number of separate payments or in other cases in which other than monthly payments are determined warranted by the Secretary: *And provided further*, That no payment received under this paragraph shall be considered as income for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal Act.

(3) In addition to any amount under paragraph (1), a local public agency may make a payment to a displaced family or individual, who does not receive the additional payment authorized under paragraph (2) and who is the owner of real property which is acquired for a project assisted under this subchapter and which is improved by a single- or two-family dwelling occupied by the owner for a period of not less than one year prior to the initiation of negotiations for the acquisition of such property. Such payment, not to exceed $5,000, shall be an amount which, when added to the acquisition payment, equals the average price required for a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market: *Provided*, That such payment may be made only to a displaced owner who purchases and occupies a dwelling within one year subsequent to the date on which he is required to move from the dwelling acquired for the project: *Provided further*, That no such payment may be made if the owner-occupant receives a payment required by the State law of eminent domain which is determined by the Secretary to have substantially the same purpose and effect as this paragraph and to be part of the cost of the project for which Federal financial assistance is available.

Payments to individuals, families, business concerns, and nonprofit organizations for recording fees, transfer taxes, incidental expenses, penalty costs, and pro rata taxes

(d) In addition to payments authorized to be made under subsections (b) and (c) of this section, a local public agency may pay to any displaced individual, family, business concern, or nonprofit organization

reasonable and necessary expenses incurred for (1) recording fees, transfer taxes, and similar expenses incidental to conveying real property to a project assisted under this subchapter, (2) penalty costs for prepayment of any mortgage encumbering such real property, and (3) the pro rata portion of real property taxes allocable to a period subsequent to the date of vesting of title or the effective date of the acquisition of such real property by such agency, whichever is earlier.

Rules and regulations; finality of administrative decisions; promptness of payments

(e) The Secretary is authorized to establish such rules and regulations as he may deem appropriate in carrying out the provisions of this section and may provide in any contract with a local public agency, or in regulations promulgated by the Secretary, that determinations of any duly designated officer or agency as to eligibility for and the amount of relocation assistance authorized by this section shall be final and conclusive for any purposes and not subject to redetermination by any court or any other officer. Such regulations shall include provisions to assure that relocation payments, as authorized by this section, shall be made as promptly as possible to all families, individuals, business concerns, and nonprofit organizations found to be eligible for such payments by reason of their having been displaced from property in the urban renewal area, without regard to any subsequent proceedings, determinations, or events relating to such property which do not bear upon whether such displacement in fact occurred.

As amended Aug. 10, 1965, Pub.L. 89–117, Title I, § 101(i), Title IV, § 404(b), (c) (1), 79 Stat. 453, 486; May 25, 1967, Pub.L. 90–19, § 6 (b), 81 Stat. 21; Aug. 1, 1968, Pub.L. 90–448, Title V, § 516, 82 Stat. 526.

References in Text. The United States Housing Act of 1937, referred to in subsec. (c), is classified to chapter 8 of this title.

The Social Security Act referred to in subsec. (c) (2), is classified to section 301 et seq. of this title.

1968 Amendment. Subsec. (c) (2). Pub.L. 90–448, § 516(1)–(3). authorized payments to displaced handicapped individuals, increased the amount of the payment from not more than $500 payable during the first five months after displacement, to not more than $500 in the first twelve months and not more than $500 in the second twelve months, payable in monthly payments over the two-year period, permitted the payments to be made on a lump sum or other than monthly basis in cases in which the small size of the payments do not warrant a number of separate payments or in other cases in which other than monthly payments are warranted, provided that no payment received shall be considered as income for purpose of eligibility under the Social Security Act or any other Federal Act, and eliminated provisions which restricted payments to families and individuals sixty-two years of age or over, displaced on or after January 27, 1964.

Subsec. (c) (3). Pub.L. 90–448, § 516(4), added subsec. (c) (3).

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (c) (1) (2) and (e) of this section.

1965 Amendments. Subsec. (b) (2). Pub. L. 89–117, § 404(b), substituted "$2,500" for "$1,500".

Subsec. (c) (2). Pub.L. 89–117, § 101(i), inserted "or a dwelling unit assisted under section 1701s of Title 12" at the end of the first proviso.

Subsec. (d). Pub.L. 89–117, § 404(c) (1), redesignated former subsec. (d) as subsec. (e) and added subsec. (d).

Subsec. (e). Pub.L. 89–117, § 404(c) (1), redesignated former subsec. (d) as subsec. (e).

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 90–19, 1967 U.S. Code Cong. and Adm.News, p. 1194; Pub.L. 90–448, 1968 U.S.Code Cong. and Adm.News, p. —.

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½. Jurisdiction

Action brought on May 14, 1966 by businessmen against urban redevelopment authority of city and others to recover certain relocation moving expenses which the authority had declined to award was properly dismissed for lack of jurisdiction under this section. Merge v. Troussi, C.A.Pa.1968, 394 F.2d 79.

1. Parties

Federal officers were indispensable parties to suit by person who had relocated his business pursuant to this section and who sought monetary relief pursuant either to valid administrative claim of reimbursable expenses or in accordance with contractual relationship between parties since a judgment favorable to claimant would affect both local and federal administrations. United Pub. & Printing Corp. v. Horan, D.C.Conn.1967, 268 F.Supp. 948.

Person who had relocated his business pursuant to this section and was asking for a supplemental claim for relocation expenses had no standing to sue as a third-party beneficiary of contract between federal agencies and local urban

renewal commission with respect to payment of relocation expenses. Id.

2. Review

Sections 701–703 of Title 5 relating to judicial review of agency action do not confer jurisdiction with respect to suit of person who had relocated under this section for a supplemental allowance for expenses of moving, since acts complained of were not acts of an authority of government of United States. United Pub. & Printing Corp. v. Horan, D.C. Conn.1967, 268 F.Supp. 948.

§ 1466. Rehabilitation grants

(a) (1) Notwithstanding any other provision of this subchapter, the Secretary may authorize a local public agency to make grants (and the urban renewal project may include the making of such grants) as prescribed in this section. Any such grant may be made only to an individual or family, as described in subsection (c), of this section, who owns and occupies real property in an urban renewal area, and only for the purpose of covering the cost of repairs and improvements necessary to make such real property conform to public standards for decent, safe, and sanitary housing as required by applicable codes or other requirements of the urban renewal plan for the area. Any contract for financial assistance under this subchapter shall provide that the capital grant otherwise payable for the project shall be increased by an amount equal to the total amount of the grants under this section and that no part of the total amount of such grants shall be required to be contributed as part of the local grant-in-aid.

(2) In addition to the authority conferred by paragraph (1), and notwithstanding any other provision of this subchapter, the Secretary is authorized, through the utilization of local public agencies where feasible, to make grants (payable from any grant funds provided under section 1453(b) of this title) to an individual or family, as described in subsection (b) of this section, to cover the cost of repairs and improvements necessary to make real property owned and occupied by such individual or family conform to public standards for decent, safe, and sanitary housing. No grants shall be made under this paragraph in the case of any property, unless (A) such property is in an area within a locality (other than an urban renewal or code enforcement area) which the governing body of the locality has determined, and so certifies to the Secretary, contains a substantial number of structures in need of such repairs and improvements, (B) there is in effect for the locality a workable program meeting the requirements of section 1451(c) of this title, and (C) the area is definitely planned for rehabilitation or concentrated code enforcement within a reasonable time, and such repairs and improvements to such property are consistent with the plan for rehabilitation or concentrated code enforcement.

(b) The Secretary is authorized to make grants (payable from any grant funds provided under section 1453(b) of this title), through the utilization of local public and private agencies where feasible, to an individual or family, as described in subsection (c) of this section, who owns and occupies real property which has been determined to be uninsurable because of physical hazards after an inspection pursuant to a statewide property insurance plan approved by the Secretary under title XII of the National Housing Act. Such grants may only be made to rehabilitate such property to the extent which the Secretary determines to be necessary to make it meet reasonable underwriting standards imposed by such plan.

(c) A grant authorized by this section may be made to an individual or family whose income does not exceed $3,000 a year, and such grant may be in the amount which does not exceed the lesser of (1) the actual (and approved) cost of the repairs and improvements involved, or (2) $3,000. In case the income of the individual or family exceeds $3,000 a year, a grant may be made under this section, subject to the limitations specified in clauses (1) and (2) of the preceding sentence, but only in an amount not to exceed that portion of the cost of the repairs and improvements which cannot be paid for with any available loan that can be amortized as part of such individual's or family's monthly housing expense with-

out requiring such monthly housing expense to exceed 25 per centum of such individual's or family's monthly income.

July 15, 1949, c. 338, Title I, § 115, as added Aug. 10, 1965, Pub.L. 89–117, Title I, § 106(a), 79 Stat. 457, and amended May 25, 1967, Pub.L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub.L. 90–448, Title V, § 503, 82 Stat. 521.

References in Text. Title XII of the National Housing Act, referred to in subsec. (b), is classified to section 1749bbb et seq. of Title 12, Banks and Banking.

1968 Amendment. Subsec. (a) (1). Pub.L. 90–448, § 503(a), (c), (d) (2), designated existing provisions as par. (1), and substituted therein "real property" for "a structure", "such real property" for "such structure" and "subsection (c)" for "subsection (b)."

Subsec. (a) (2). Pub.L. 90–448, § 503(c), added par. (2).

Subsec. (b). Pub.L. 90–448, § 503(d) (1), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub.L. 90–448, § 503(b), (d) (1), redesignated former subsec. (b) as (c), and substituted therein "$3,000" for "$1,500."

1967 Amendment. Subsec. (a). Pub.L. 90–19 substituted "Secretary" for "Administrator".

Amendment of Contracts Executed Prior to Enactment of Section. Section 106 (b) of Pub.L. 89–117 provided that: "Any contract with a local public agency which was executed under title I of the Housing Act of 1949 [this subchapter] before the date of enactment of this Act [Aug. 10, 1965] may be amended to provide for grants authorized by section 115 of the Housing Act of 1949 [this section]."

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 90–19, 1967 U.S. Code Cong. and Adm.News, p. 1194; Pub.L. 90–448, 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1467. Grants for demolition of unsafe structures; authorization; maximum amount; conditions precedent

(a) Notwithstanding any other provision of this subchapter, the Secretary is authorized to enter into contracts to make, and to make, grants as provided in this section (payable from any grant funds provided under section 1453(b) of this title) to cities, other municipalities, and counties to assist in financing the cost of demolishing structures which under State or local law have been determined to be structurally unsound, a harborage or potential harborage of rats, or unfit for human habitation, and which such city, municipality, or county has authority to demolish. The amount of any grant under this section shall not exceed two-thirds of the cost of the demolition of such structures.

(b) No grant shall be made under this section unless the structures to be demolished are located in an urban renewal area, or, in the case of structures outside an urban renewal area, (1) the locality involved has an approved workable program for community improvement in accordance with the requirements of section 1451(c) of this title, as determined by the Secretary, (2) the demolition to be assisted will be on a planned neighborhood basis and will further the over-all renewal objectives of such locality, or will be consistent with a systematic rodent control program being undertaken in the neighborhood, (3) there is in such locality a program of enforcement of existing local housing and related codes, (4) the structures to be demolished constitute a public nuisance and a serious hazard to the public health or welfare, and (5) the governing body of such locality has determined that other available legal procedures have been exhausted to secure remedial action by the owner of the structures involved and that demolition by governmental action is required.

July 15, 1949, c. 338, Title I, § 116, as added Aug. 10, 1965, Pub.L. 89–117, Title III, § 311(a), 79 Stat. 477, and amended May 25, 1967, Pub.L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub.L. 90–448, Title V, § 510, 82 Stat. 524.

1968 Amendment. Subsec. (a). Pub.L. 90–448, § 510(a), included structures which are a harborage or potential harborage of rats.

Subsec. (b). Pub.L. 90–448, § 510(b), authorized grants where the demolition will be consistent with a systematic rodent control program being undertaken in the neighborhood.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) and (b) of this section.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 90–19, 1967 U.S. Code Cong. and Adm.News, p. 1194; Pub.L. 90–448, 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1468. Grants for code enforcement; authorization; maximum amount; conditions precedent

Notwithstanding any other provision of this subchapter, the Secretary is authorized to enter into contracts to make, and to make, grants as provided in this section (payable from any grant funds provided under section 1453(b) of this title) to cities, other municipalities, and counties for the purpose of assisting such localities in carrying out programs of concentrated code enforcement in deteriorated or deteriorating areas in which such enforcement, together with those public improvements to be provided by the locality, may be expected to arrest the decline of the area. Such grants shall not exceed two-thirds (or three-fourths in the case of any city, other municipality, or county having a population of 50,000 or less according to the most recent decennial census) of the cost of planning and carrying out such programs which may include the provision and repair of necessary streets, curbs, sidewalks, street lighting, tree planting, and similar improvements within such areas. The Secretary shall not make any grant under this section unless he has obtained adequate assurances (1) that the locality will maintain during the period of the contract, in addition to its expenditures for planning and carrying out any program assisted under this section, a level of expenditures for code enforcement activities at not less than its normal expenditures for such activities prior to the execution of such contract, and (2) that the locality has a satisfactory program for the provision of all necessary public improvements for such areas. The provisions of sections 1451(c), 1456, 1465, and 1466 of this title shall be applicable to activities and undertakings assisted under this section to the same extent as if such activities and undertakings were being carried out in an urban renewal area as part of an urban renewal project: *Provided*, That the Secretary may, in addition to authorizing a local public agency to make grants as prescribed in section 1466 of this title, make such grants through the utilization of local private nonprofit agencies.

July 15, 1949, c. 338, Title I, § 117, as added Aug. 10, 1965, Pub.L. 89–117, Title III, §§ 311(a), 79 Stat. 478, and amended May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub.L. 90–448, Title V, § 515, 82 Stat. 525.

1968 Amendment. Pub.L. 90–448 authorized the Secretary, in addition to authorizing a local public agency to make grants as prescribed in section 1466 of this title, to make such grants through the utilization of local private nonprofit agencies.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 90–19, 1967 U.S. Code Cong. and Adm.News, p. 1194; Pub.L. 90–448, 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1468a. Interim assistance for blighted areas; grants to cities, other municipalities, and counties; encouragement of employment of unemployed or underemployed residents

Notwithstanding any other provision of this subchapter, the Secretary is authorized to enter into contracts (in an aggregate amount not to exceed $15,000,000 in any fiscal year) to make, and to make, grants as provided in this section (payable from any grant funds provided under section 1453(b) of this title) to cities, other municipalities, and counties for the purpose of assisting such localities in carrying our programs to alleviate harmful conditions in slum and blighted areas which are planned for substantial clearance, rehabilitation, or federally assisted code enforcement in the near future but in which some immediate public action is needed until clearance, rehabilitation, or code enforcement activities can be undertaken. Such grants shall not exceed two-thirds (or three-fourths in the case of any city, other municipality, or county having a population of fifty thousand or less according to the most recent decennial census) of the cost of planning and carrying out programs which may include (1) the repair of streets, sidewalks, parks, playgrounds,

publicly owned utilities, and public buildings to meet needs consistent with the short-term continued use of the area prior to the undertaking of the contemplated clearance or upgrading activities, (2) the improvement of private properties to the extent needed to eliminate the most immediate dangers to public health and safety, (3) the demolition of structures determined to be structurally unsound or unfit for human habitation and which constitute a public nuisance and serious hazard to the public health and safety, (4) the establishment of temporary public playgrounds on vacant land within the area, and (5) the improvement of garbage and trash collection, street cleaning, and similar activities. The Secretary shall encourage, wherever feasible, the employment of otherwise unemployed or underemployed residents of the area in carrying out the activities and undertakings assisted under this section. The provisions of sections 1451(c), 1456, and 1465 of this title shall be applicable to activities and undertakings assisted under this section to the same extent as if such activities and undertakings were being carried out in an urban renewal area as part of an urban renewal project.

July 15, 1949, c. 338, Title I, § 118, as added Aug. 1, 1968, Pub.L. 90–448, Title V, § 514, 82 Stat. 525.

Legislative History. For legislative history and purpose of Pub.L. 90–448, see 1968 U.S.Code Cong. and Adm.News, p. —.

PART B.—NEIGHBORHOOD DEVELOPMENT PROGRAMS

§ 1469. Declaration of purpose—Authorization for financial assistance to local public agencies

(a) To facilitate more rapid renewal and development of urban areas on an effective scale, and to encourage more efficient and flexible utilization of public and private development opportunities by local communities in such areas, the Secretary is authorized to make financial assistance available under this subchapter to local public agencies for undertakings and activities which are carried out under a neighborhood development program approved by him pursuant to this part.

Extent of neighborhood development program

(b) A neighborhood development program shall consist of urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this subchapter for planning and carrying out urban renewal projects, except as modified by the provisions of this part.

Conditions for approval of applications for financial assistance

(c) No application for financial assistance in planning and carrying out a neighborhood development program shall be approved by the Secretary unless—

(1) the governing body of the locality has, by resolution or ordinance, approved the proposed program and the annual increment covered by the application and authorized the filing of the application for financial assistance; and

(2) the Secretary has concluded that there is the necessary capacity to carry out the undertakings and activities included under the program.

July 15, 1949, c. 338, Title I, § 131, as added Aug. 1, 1968, Pub.L. 90–448, Title V, § 501(b), 82 Stat. 518.

Neighborhood Development Programs by District of Columbia Redevelopment Land Agency. Section 501(c) of Pub.L. 90–448 provided that: "Notwithstanding any requirement or condition to the contrary in section 6 or 20(i) of the District of Columbia Redevelopment Act of 1945 or in any other provision of law, the District of Columbia Redevelopment Land Agency may plan and undertake neighborhood development programs under part B of title I of the Housing Act of 1949 (as added by this section) [sections 1469–1469c of this title], subject to all of the provisions of such Act of 1945 to the extent not inconsistent with such part B, and any such program shall be regarded as complying with the require-

ments of such sections 6 and 20(i) and of such other provision of law if it meets the applicable requirements established under such part B."

Legislative History: For legislative history and purpose of Pub.L. 90–448, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1469a. Financing of undertakings and activities; payment of excess of sale price and imputed capital value of land or other property leased or retained over gross project cost

(a) Upon the approval of a neighborhood development program by the Secretary, the cost of any undertakings and activities authorized as part of the program shall be financed in accordance with the loan, capital grant, and project cost provisions of part A, except that—

(1) net project cost may be calculated on the basis of costs incurred and proceeds derived for the account of the program during a specified twelve-month period, and may be recalculated for succeeding periods of twelve months to reflect additional costs and additional proceeds since the date of the last computation or recomputation; and

(2) if property has been acquired but not disposed of prior to the computation or recomputation of net project cost, temporary loans made or secured under this subchapter to finance undertakings or activities included in the program may remain outstanding until the property has been disposed of and the proceeds thereof together with additional funds becoming available to the program, are sufficient to permit repayment of the loans.

(b) In the event that gross project cost as computed for a specified twelve-month period is exceeded, with respect to that period, by the sum of (1) the sales price of land or other property sold, and (2) the imputed capital value of land or other property leased or retained by the local public agency in accordance with the provisions of the urban renewal plan, the local public agency shall pay to the Secretary two-thirds of the excess (or three-fourths in the case of a program on a three-fourths grant basis), which amount shall be available to the Secretary for grant payments under section 1453 of this title.

July 15, 1949, c. 338, Title I, § 132, as added Aug. 1, 1968, Pub.L. 90–448, Title V, § 501(b), 82 Stat. 519.

Legislative History: For legislative history and purpose of Pub.L. 90–448, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1469b. Local grants-in-aid—Determination of eligibility

(a) For the purpose of determining the eligibility of local grants-in-aid in connection with undertakings and activities carried out under a neighborhood development program, the three-year period referred to in the second paragraph of section 1460(d) of this title shall be deemed to be a period of three years prior to the authorization by the Secretary of the first contract for financial assistance under the program which includes the urban renewal area which is benefited by the public improvement or facility for which credit is claimed; and the seven-year period referred to in clause (1) of section 1463(b) of this title shall be deemed to be a period of seven years prior to the date of authorization by the Secretary of the first contract for financial assistance under the program which includes the urban renewal area which is benefited by the expenditures for which credit is claimed.

Cost of public improvement or facility

(b) No portion of the cost of a public improvement or public facility (to the extent otherwise eligible) may be included as a local grant-in-aid in computing the gross project cost of an approved program for any twelve-month period—

(1) prior to commencement of construction of the improvement or facility, or

(2) in excess of the amount actually expended or obligated by contract.

Excess local grants-in-aid; inapplicability of pooling provisions

(c) The provisions of section 1454 of this title with respect to the pooling of local grants-in-aid among the various projects undertaken by a local public agency shall not be applicable with respect to any excess local grants-in-aid resulting from the urban renewal projects contained in a neighborhood development program.

July 15, 1949, c. 338, Title I, § 133, as added Aug. 1, 1968, Pub.L. 90–448, Title V, § 501(b), 82 Stat. 519.

Legislative History: For legislative history and purpose of Pub.L. 90–448, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1469c. General provisions—Workable program requirement; capital grants; relocation requirements; transient housing; demolition and removal of buildings and improvements

(a) For purposes of this part—

(1) the workable program requirement in section 1451(c) of this title shall apply to the authorization, rather than the execution, of any contract for loans or capital grants;

(2) capital grants on a three-fourths basis may only be made under section 1453(a) (2) (B) of this title;

(3) the relocation requirements specified in section 105(c) shall apply to each annual increment of an approved program;

(4) section 1456(g) of this title (relating to transient housing) shall apply to activities undertaken under approved programs, except that the determination as to need for transient housing shall be made with respect to any sale or lease of land for construction of such housing prior to such sale or lease; and

(5) the requirement concerning demolition and removal of buildings and improvements stated in clause (A) of the sentence following paragraph (10) of section 1460(c) of this title shall apply to each annual increment of an approved program.

Obligation to provide financial assistance for subsequent annual increments

(b) The aprpoval by the Secretary of financial assistance for one or more annual increments of a neighborhood development program shall not be considered as obligating him to provide financial assistance for any subsequent annual increments.

Extent of urban renewal plan; modification; establishment of requirements prescribing scope and content of plan

(c) The urban renewal plan referred to in section 1460(b) of this title may cover one or more of the urban renewal areas covered by a neighborhood development program and such plan may be modified from time to time to cover additional urban renewal areas added to the program. The Secretary may establish such requirements as he deems appropriate prescribing the scope and content of such plan, taking into consideration, among other matters, the degree of detail needed in the plan to properly and expeditiously carry out the activities and undertakings proposed in any annual increment of a neighborhood development program.

July 15, 1949, c. 338, Title I, § 134, as added Aug. 1, 1968, Pub.L. 90–448, Title V, § 501(b), 82 Stat. 520.

Legislative History: For legislative history and purpose of Pub.L. 90–448, see 1968 U.S.Code Cong. and Adm.News, p. —.

SUBCHAPTER III.—FARM HOUSING

§ 1471. Financial assistance by Secretary of Agriculture; definitions; conditions of eligibility

(a) The Secretary of Agriculture (hereinafter referred to as the "Secretary") is authorized, subject to the terms and conditions of this sub-

chapter, to extend financial assistance, through the Farmers Home Administration, (1) to owners of farms in the United States and in the Territories of Alaska and Hawaii and in Puerto Rico and the Virgin Islands, to enable them to construct, improve, alter, repair, or replace dwellings and other farm buildings on their farms, and to purchase buildings and land constituting a minimum adequate site, in order to provide them, their tenants, lessees, sharecroppers, and laborers with decent, safe, and sanitary living conditions and adequate farm buildings as specified in this subchapter, and (2) to owners of other real estate in rural areas for the construction, improvement, alteration, or repair of dwellings, related facilities, and farm buildings and to rural residents for such purposes and for the purchase of buildings and the purchase of land constituting a minimum adequate site, in order to enable them to provide dwellings and related facilities for their own use and buildings adequate for their farming operations, and (3) to elderly persons who are or will be the owners of land in rural areas for the construction, improvement, alteration, or repair of dwellings and related facilities, the purchase of dwellings and related facilities and the purchase of land constituting a minimum adequate site, in order to provide them with adequate dwellings and related facilities for their own use, and (4) to an owner described in clause (1), (2), or (3) for refinancing indebtedness which—

(A) was incurred for an eligible purpose described in such clause,

(B) if not refinanced, is likely to result at an early date in loss of the applicant's necessary dwelling or essential farm service buildings,

(C) is not held or insured by the United States or any agency thereof, and

(D) was incurred prior to the enactment of this clause.

* * * * * * * * * *

(c) In order to be eligible for the assistance authorized by subsection (a) of this section, the applicant must show (1) that he is the owner of a farm which is without a decent, safe, and sanitary dwelling for himself and his family and necessary resident farm labor, or for the family of the operating tenant, lessee, or sharecropper, or without other farm buildings adequate for the type of farming in which he engages or desires to engage, or that he is the owner of other real estate in a rural area or a rural resident without an adequate dwelling or related facilities for his own use or buildings adequate for his farming operations, or that he is an elderly person in a rural area without an adequate dwelling or related facilities for his own use, or that he is the owner of a farm or other real estate in a rural area who needs refinancing of indebtedness described in clause (4) of subsection (a); (2) that he is without sufficient resources to provide the necessary housing and buildings on his own account; and (3) that he is unable to secure the credit necessary for such housing and buildings from other sources upon terms and conditions which he could reasonably be expected to fulfill.

As amended Aug. 10, 1965, Pub.L. 89–117, Title X, § 1001, 79 Stat. 497; Nov. 3, 1966, Pub.L. 89–754, Title VIII, §§ 801, 807, 80 Stat. 1282.

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1966 Amendment. Subsec. (a) (1)–(3). Pub.L. 89–754, § 801, struck out "previously occupied" preceding "buildings and land" in cl. (1), "buildings and the purchase of land" in cl. (2), and "dwellings and related facilities" in cl. (3).

Subsec. (a) (4). Pub.L. 89–754, § 807 (a), added clause (4).

Subsec. (c) (1). Pub.L. 89–754, § 807 (b), inserted as a condition of eligibility that the applicant be the owner of a farm or other real estate in a rural area who needs refinancing of indebtedness described in subsec. (a) (4) of this section.

1965 Amendment. Subsec. (a). Pub.L. 89–117, § 1001(a), authorized the extension of formal assistance to owners of farms to purchase previously occupied buildings and land constituting a minimum adequate site, to owners of other real estate in rural areas for the construction, improvement, alteration, or repair of dwellings, related facilities, and farm buildings, and to rural residents for such purposes and for the purchase of previously occupied buildings and the purchase of land constituting a minimum adequate site.

Subsec. (c). Pub.L. 89–117, § 1001(b), inserted "or a rural resident" in cl. (1) after "or that he is the owner of other real estate in a rural area".

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 89–754, 1966 U.S. Code Cong. and Adm.News, p. 3999.

§ 1472. Loans for housing and buildings on adequate farms—Terms of loan

(a) If the Secretary determines that an applicant is eligible for assistance as provided in section 1471 of this title and that the applicant has the ability to repay in full the sum to be loaned, with interest, giving due consideration to the income and earning capacity of the applicant and his family from the farm and other sources, and the maintenance of a reasonable standard of living for the owner and the occupants of said farm, a loan may be made by the Secretary to said applicant for a period of not to exceed thirty-three years from the making of the loan with interest, in the case of applicants described in clauses (1) and (2) of section 1471(a) of this title, at a rate not to exceed 5 per centum per annum on the unpaid balance of principal, and, in the case of applicants described in clause (3) of section 1471(a) of this title and applicants under sections 1473 and 1474 of this title, at a rate not to exceed 4 per centum per annum on such unpaid balance. Loans made or insured under this subchapter shall be conditioned on the borrower paying such fees and other charges as the Secretary may require. The Secretary may accept the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability.

As amended Aug. 10, 1965, Pub.L. 89–117, Title X, § 1002, 79 Stat. 497; Nov. 3, 1966, Pub.L. 89–754, Title VIII, § 802, 80 Stat. 1282.

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1966 Amendment. Subsec. (a). Pub.L. 89–754 substituted "The" for "In cases of applicants who are elderly persons, the" in the third sentence.

1965 Amendment. Subsec. (a). Pub.L. 89–117 increased to 5 percentum the interest rate in the case of applicants described in clauses (1) and (2) of section 1471(a) of this title and also authorized the Secretary to charge fees on loans made or insured under this subchapter.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 89–754, 1966 U.S. Code Cong. and Adm.News, p. 3999.

§ 1474. Special loans and grants for minor improvements; terms; loans for enlargement or development

(a) In the event the Secretary determines that an eligible applicant cannot qualify for a loan under the provisions of sections 1472 and 1473 of this title and that repairs or improvements should be made to a farm dwelling occupied by him, in order to make such dwelling safe and sanitary and remove hazards to the health of the occupant, his family, or the community, and that repairs should be made to farm buildings in order to remove hazards and make such buildings safe, the Secretary may make a grant or a combined loan and grant, to the applicant to cover the cost of improvements or additions, such as repairing roofs, providing toilet facilities, providing a convenient and sanitary water supply, supplying screens, repairing or providing structural supports, or making other similar repairs or improvements. No assistance shall be extended to any one individual under this subsection in the form of a loan, grant, or combined loan and grant, in excess of $1,500. Any portion of the sums advanced to the borrower treated as a loan shall be secured and be repayable in accordance with the principles and conditions set forth in this subchapter. Sums made available by grant may be made subject to the conditions set out in this subchapter for the protection of the Government with respect to contributions made on loans by the Secretary.

As amended Nov. 3, 1966, Pub.L. 89–754, Title VIII, § 803, 80 Stat. 1282.

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1966 Amendment. Subsec. (a). Pub.L. 89–754 increased limitation on assistance from $1,000 to $1,500.

Legislative History: For legislative history and purpose of Pub.L. 89–754, see 1966 U.S.Code Cong. and Adm. News, p. 3999.

§ 1474a. Security for direct or insured rural housing loans to farmer applicants

On and after August 8, 1968, farmer applicants for direct or insured rural housing loans shall be required to provide only such collatera

security as is required of owners of nonfarm tracts.
Pub.L. 90–463, Title II, § 201, Aug. 8, 1968, 82 Stat. 651.

Codification. Section was enacted as a part of the Department of Agriculture and Related Agencies Appropriation Act, 1969, and not as a part of the Housing Act of 1949, which in general comprises this chapter. See, also, Reference in Text note under section 1441 of this title.

§ 1476. Buildings and repairs—Construction in accordance with plans and specifications; supervision and inspection; technical services and research

(a) In connection with financial assistance authorized in this subchapter, the Secretary shall require that all new buildings and repairs financed under this subchapter shall be substantially constructed and in accordance with such building plans and specifications as may be required by the Secretary. Buildings and repairs constructed with funds advanced pursuant to this subchapter shall be supervised and inspected, as may be required by the Secretary, by competent employees of the Secretary. In addition to the financial assistance authorized in this subchapter, the Secretary is authorized to furnish, through such agencies as he may determine, to any person, including a person eligible for financial assistance under this subchapter, without charge or at such charges as the Secretary may determine, technical services such as building plans, specifications, construction supervision and inspection, and advice and information regarding farm dwellings and other buildings. As amended Aug. 10, 1965, Pub.L. 89–117, Title X, § 1005(d), 79 Stat. 501.

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Report of Estimates of National Farm Housing Needs

Pub.L. 89–348, § 1(5), Nov. 8, 1965, 79 Stat. 1310, repealed provisions of subsec. (e) of this section which related to reports of the estimates of national farm housing needs and of progress toward meeting such needs.

1965 Amendment. Subsec. (a). Pub.L. 89–117 substituted "this subchapter" for "sections 1471–1474 and sections 1484–1486 of this title" wherever appearing.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614

§ 1481. Issuance of notes and obligations for loan funds; amount; limitation; security; form and denomination; interest; purchase and sale by Treasury; public debt transaction

The Secretary may issue notes and other obligations for purchase by the Secretary of the Treasury for the purpose of making direct loans under this subchapter. The total principal amount of such notes and obligations issued pursuant to this section during the period beginning July 1, 1956, and ending October 1, 1969, shall not exceed $850,000,000. The notes and obligations issued by the Secretary shall be secured by the obligations of borrowers and the Secretary's commitments to make contributions under this subchapter and shall be repaid from the payment of principal and interest on the obligations of the borrowers and from funds appropriated hereunder. The notes and other obligations issued by the Secretary shall be in such forms and denominations, shall have such maturities, and shall be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Each such note or other obligation shall bear interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note or other obligation is issued, which are neither due nor callable for redemption for 15 years from their date of issue. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Secretary issued hereunder and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the

purposes for which securities may be issued under such Act are extended to include any purchases of such obligations. The Secretary of the Treasury may at any time sell any of the notes or obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or obligations shall be treated as public debt transactions of the United States. As amended Aug. 10, 1965, Pub.L. 89–117, Title X, § 1003(b), 79 Stat. 500.

References in Text. The Second Liberty Bond Act, as amended, referred to in the text, is classified to sections 745, 752–754b, 757, 757b–758, 760, 764–766, 769, 771, 773, 774 and 801 of Title 31, Money and Finance.

1965 Amendment. Pub.L. 89–117 changed the purpose for which the Secretary may issue notes and other obligations for purchase by the Secretary of the Treasury from that of making loans under this subchapter (other than loans under section 1474(b) or 1485 of this title) to that of making direct loans under the entire subchapter, substituted "October 1, 1969" for "September 30, 1965", eliminated reservation that, of the allowable $850,000,000 principal amount of notes and obligations, $50,000,000 be available exclusively for assistance to elderly persons under clause (3) of section 1471(a) of this title, and changed the method for setting the interest on notes and obligations from that of having the Secretary set a rate taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the notes or obligations to that of the Secretary setting a rate equal to the average rate payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note or other obligation is issued, which are neither due nor callable for redemption for 15 years from their date of issuance.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614.

§ 1482. Contribution commitments

In connection with loans made pursuant to section 1473 of this title, the Secretary is authorized to make commitments for contributions aggregating not to exceed $10,000,000 during the period beginning July 1, 1956, and ending October 1, 1969. As amended Aug. 10, 1965, Pub. L. 89–117, Title X, § 1005(a), 79 Stat. 501.

1965 Amendment. Pub.L. 89–117 substituted "October 1, 1969" for "September 30, 1965".

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614

§ 1483. Appropriations

There is authorized to be appropriated to the Secretary (a) such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to (i) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title, and (ii) the interest due on a similar sum represented by notes or other obligations issued by the Secretary; (b) not to exceed $50,000,000 for grants pursuant to section 1474(a) of this title and loans pursuant to section 1474(b) of this title during the period beginning July 1, 1956, and ending October 1, 1969; (c) not to exceed $50,000,000 for financial assistance pursuant to section 1486 of this title for the period ending October 1, 1969; (d) not to exceed $250,000 per year for research and study programs pursuant to subsections (b), (c), and (d) of section 1476 of this title during the period beginning July 1, 1961, and ending October 1, 1969; (e) such further sums as may be necessary to enable the Secretary to carry out the provisions of this subchapter; and (f) such sums as may be required by the Secretary to administer the provisions of sections 1715z and 1715z—1 of Title 12.

As amended Aug. 10, 1965, Pub.L. 89–117, Title X, § 1005(b), 79 Stat. 501; Aug. 1, 1968, Pub.L. 90–448, Title X, § 1003, 82 Stat. 553.

1968 Amendment. Pub.L. 90–448 authorized appropriations of such sums as may be required to administer the provisions of sections 1715z and 1715z—1 of Title 12.

1965 Amendment. Pub.L. 89–117 substituted "October 1, 1969" for "September 30, 1965" wherever appearing and "$50,000,000" for "$10,000,000" in clause (c), as the maximum allowable appropriation for financial assistance pursuant to section 1486 of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 90–448, 1968 U.S. Code Cong. and Adm.News, p. —.

§ 1484. Insurance of loans for housing and related facilities for domestic farm labor—Authorization; terms and conditions

* * * * * * * * * *

Definitions

(f) As used in this section—

* * * * * * * * * *

(2) the term "related facilities" means (A) new structures suitable for use as dining halls, community rooms or buildings, or infirmaries, or for other essential services facilities, and (B) existing structures which can be made suitable for the above uses by rehabilitation, alteration, conversion, or improvement; and

As amended Aug. 1, 1968, Pub.L. 90–448, Title X, § 1004, 82 Stat. 553.

* * * * * * * * * *

1968 Amendment. Subsec. (f) (2). Pub.L. 90–448 included land necessary for an adequate site within the definition of "related facilities."

Legislative History: For legislative history and purpose of Pub.L. 90–448, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1485. Housing and related facilities for elderly persons and families or other persons and families of low income—Direct loans; authorization; terms and conditions; revolving fund; appropriations

(a) The Secretary is authorized to make loans to private nonprofit corporations and consumer cooperatives to provide rental or cooperative housing and related facilities for elderly persons and elderly families of low or moderate income or other persons and families of low income in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

* * * * * * * * * *

Insurance of loans; authorization; terms and conditions; utilization of Agricultural Credit Insurance Fund; expiration date

(b) The Secretary is authorized to insure and make commitments to insure loans made to any individual, corporation, association, trust, or partnership to provide rental or cooperative housing and related facilities for elderly persons and elderly families or other persons and families of moderate income in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

* * * * * * * * * *

(5) no loan shall be insured under this subsection after October 1, 1969.

* * * * * * * * * *

Definitions

(d) As used in this section—

(1) the term "housing" means new or existing housing suitable for dwelling use by occupants eligible under this section;

* * * * * * * * * *

(4) the term "development cost" means the cost of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities and purchasing and improving the necessary land, including necessary and appropriate fees and charges approved by the Secretary. Such fees and charges may include payments to qualified consulting organizations or foundations which operate on a nonprofit basis and which render services or assistance to nonprofit corporations or consumer cooperatives who provide housing and related facilities.

As amended Aug. 10, 1965, Pub.L. 89–117, Title X, § 1005(c), 79 Stat. 501; Nov. 3, 1966, Pub.L. 89–754, Title VIII, §§ 804, 805, 80 Stat. 1282.

* * * * * * * * * *

1966 Amendment. Subsec. (a). Pub.L. 89–754, §§ 804(a), 805(a), inserted "or other persons and families of low income" following "income" and substituted "rental or cooperative housing" for "rental housing", respectively.

Subsec. (b). Pub.L. 89–754, § 805(a), (b), substituted "rental or cooperative housing" for "rental housing" and inserted "or other persons and families of moderate income" following "families", respectively.

Subsec. (d) (1). Pub.L. 89–754, § 804 (b), substituted in the definition of "housing" the words "occupants eligible under this section" for "elderly persons or elderly families."

Subsec. (d) (4). Pub.L. 89–754, § 805 (c), defined fees and charges as used for purposes of "development cost" to include payments to qualified consulting organizations or foundations which operate on a nonprofit basis and which render services or assistance to nonprofit corporations or consumer cooperatives who provide housing and related facilities.

1965 Amendment. Subsec. (b)(5). Pub. L. 89–117 substituted "October 1, 1969" for "September 30, 1965".

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 89–754, 1966 U.S. Code Cong. and Adm.News, p. 3999.

§ 1487. Rural Housing Insurance Fund—Authority to make and insure loans for housing and buildings on adequate farms; restrictions

(a) The Secretary may insure loans meeting the requirements of section 1472 of this title, and may make loans in accordance with the requirements of such section to be sold and insured; except that such loans shall—

(1) if the borrowers are persons of low or moderate income (as defined by the Secretary), (A) not exceed amounts necessary to provide adequate housing, modest in size, design, and cost (as determined by the Secretary), and (B) bear interest at a rate not to exceed 5 per centum per annum; but no loan under this paragraph shall be insured or made after October 1, 1969, except pursuant to a commitment entered into before that date; and

(2) if the borrowers are persons other than those described in clause (1), bear interest and provide for insurance or service charges at rates comparable to the combined rate of interest and premium charges in effect under section 1709 of Title 12, as determined by the Secretary.

Authority to make and insure loans for housing and related facilities for domestic farm labor and elderly persons

(b) The Secretary may insure loans in accordance with the requirements of sections 1484 of this title (exclusive of subsections (a)(3), (a)(5), and (b) thereof) and 1485 of this title (exclusive of subsections (a) and (b)(4) thereof), and may make loans meeting such requirements to be sold and insured. Upon the expiration of ninety days after the original capitalization of the Rural Housing Insurance Fund, created by subsection (e) of this section, no new loans shall be made or insured under section 1484 or 1485(b) of this title, except in conformity with this section.

Use of funds from Rural Housing Insurance Fund for loans; limit on aggregate of loans

(c) The Secretary may use the Rural Housing Insurance Fund for the purpose of making loans to be sold and insured under this section, but the aggregate of such loans which are held by the Secretary at any one time shall not exceed $100,000,000.

Authority to insure payment of interest and principal; liens; assignability of notes evidencing loans

(d) The Secretary may, in conformity with subsections (a) and (b) of this section, insure the payment of principal and interest as it becomes due on loans made by lenders other than the United States, and on loans made from the Rural Housing Insurance Fund which are sold by the Secretary. Any contract of insurance executed by the Secretary hereunder shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or material misrepresentation of which the holder has actual knowledge. In connection with loans insured under this section, the Secretary may take liens running to the United States notwithstanding the fact that the notes evidencing such

loans may be held by lenders other than the United States. Notes evidencing such loans shall be freely assignable, but the Secretary shall not be bound by any such assignment until notice thereof is given to and acknowledged by him.

Rural Housing Insurance Fund; creation; authorization of appropriations

(e) There is hereby created the Rural Housing Insurance Fund (hereinafter referred to as the "Fund") which shall be used by the Secretary as a revolving fund for carrying out the provisions of this section. There are authorized to be appropriated to the Secretary such sums as may be necessary for the purposes of the Fund.

Investment of excess Fund moneys

(f) Money in the Fund not needed for current operations shall be invested in direct obligations of the United States or obligations guaranteed by the United States.

Fund assets and liabilities; sale of loans; agreements for servicing and purchasing loans

(g) All funds, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and all collections and proceeds therefrom, shall constitute assets of the Fund; and all liabilities and obligations of such assets shall be liabilities and obligations of the Fund. Loans may be held in the Fund and collected in accordance with their terms or may be sold by the Secretary with or without agreements for insurance thereof. The Secretary is authorized to make agreements with respect to servicing loans held or insured by him under this section and purchasing such insured loans on such terms and conditions as he may prescribe.

Issuance of notes; form and denominations; interest rate; purchase by Secretary of the Treasury; debt transactions

(h) The Secretary is authorized to issue notes to the Secretary of the Treasury to obtain funds necessary for discharging obligations under this section and for authorized expenditures out of the Fund, but, except as may be authorized in appropriation Acts, not for the original or any additional capital of the Fund. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Each note shall bear interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note is issued, which are neither due nor callable for redemption for fifteen years from their date of issue. The Secretary of the Treasury is authorized and directed to purchase any notes of the Secretary issued hereunder, and for that purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which such securities may be issued under such Act are extended to include purchases of notes issued by the Secretary. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States. The notes issued by the Secretary to the Secretary of the Treasury shall constitute obligations of the Fund.

Retention of annual charge; administrative expenses; merger of funds

(i) The Secretary may retain out of interest payments by the borrower an annual charge in an amount specified in the insurance or sale agreement applicable to the loan. Of the charges retained by the Secretary, if any, not to exceed 1 per centum per annum of the unpaid balance of the loan shall be deposited in the Fund. Any retained charges not deposited in the Fund shall be available for administrative expenses in carrying out the provisions of this subchapter, to be transferred annually, and become

merged with any appropriation for administrative expenses of the Farmers Home Administration, when and in such amounts as may be authorized in appropriation Acts.

Additional uses of Fund moneys

(j) The Secretary may also utilize the Fund—

(1) to pay amounts to which the holder of the note is entitled in accordance with an insurance or sale agreement under this section accruing between the date of any prepayment by the borrower to the Secretary and the date of transmittal of any such prepayments to the holder of the note; and in the discretion of the Secretary, prepayments other than final payments need not be remitted to the holder until due;

(2) to pay the holder of any note insured under this section any defaulted installment or, upon assignment of the note to the Secretary at the Secretary's request, or pursuant to a purchase agreement, the entire balance outstanding on the note; and

(3) to pay taxes, insurance, prior liens, expenses necessary to make fiscal adjustments in connection with the application and transmittal of collections, and other expenses and advances to protect the security for loans which are insured under this section or held in the Fund, and to acquire such security property at foreclosure sale or otherwise.

July 15, 1949, c. 338, Title V, § 517, as added Aug. 10, 1965, Pub.L. 89–117, Title X, § 1003(a), 79 Stat. 498, and amended Nov. 3, 1966, Pub.L. 89–754, Title VIII, § 806, 80 Stat. 1282.

References in Text. The Second Liberty Bond Act, as amended, referred to in subsec. (h), is classified to sections 745, 752–754b, 757, 757b–758, 760, 764–766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

1966 Amendment. Subsec. (a) (1). Pub.L. 89–754 substituted restriction against insurance or making of a loan under this par. after Oct. 1, 1969, except pursuant to a commitment entered into before that date for former clause (C) which provided that such loans shall not exceed in the aggregate of $300,000,000 of new loans made or insured in any one fiscal year.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 89–754, 1966 U.S. Code Cong. and Adm.News, p. 3999.

§ 1488. Rural Housing Direct Loan Account—Creation; authorization of appropriations

(a) There is hereby created the Rural Housing Direct Loan Account (hereinafter referred to as the "Account") which shall be used by the Secretary for carrying out the provisions of this section. There are authorized to be appropriated to the Secretary such sums as may be necessary for the purposes of the Account.

Composition of Account; deposit in Account of collections and proceeds from assets acquired thereby

(b) There are transferred to the Account (1) all funds, claims, notes, mortgages, contracts, and property, and all collections and proceeds therefrom, held by the Secretary under the direct loan provisions of this subchapter, including those securing notes issued by the Secretary to the Secretary of the Treasury under section 1481 of this title and any unexpended balance of amounts borrowed upon such notes, and (2) all unexpended balances of appropriations for direct loans under this subchapter, including the fund authorized by section 1485(a) of this title. All amounts hereafter borrowed by the Secretary from the Secretary of the Treasury under section 511 shall be deposited in the Account. All collections and proceeds from assets acquired by the Account shall be deposited in the Account.

Issuance of notes to Secretary of the Treasury; terms and conditions of notes; purchase by Secretary of the Treasury; debt transactions

(c) When and in such amounts as may be authorized in appropriation Acts, the Secretary may issue notes to the Secretary of the Treasury to

obtain funds to be deposited in the Account. The form, denominations, maturities, and other terms and conditions of such notes shall be prescribed by the Secretary with the approval of the Secretary of the Treasury. Each note shall bear interest at the average rate determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note is issued, which are neither due nor callable for redemption for fifteen years from their date of issue. The Secretary of the Treasury is authorized and directed to purchase any notes of the Secretary issued hereunder, and for that purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which such securities may be issued under such Act are extended to include the purchase of notes issued by the Secretary. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States.

Utilization of Account funds

(d) The Account shall remain available to the Secretary for the payment of interest and principal on notes issued by the Secretary to the Secretary of the Treasury under section 1481 of this title or this section, and for direct loans and related advances under this subchapter in such amounts as are now authorized by law and in such further amounts as shall be authorized in appropriation Acts. Amounts so authorized for such loans and advances shall remain available until expended. July 15, 1949, c. 338, Title V, § 518, as added Aug. 10, 1965, Pub.L. 89–117, Title X, § 1003(a), 79 Stat. 500.

References in Text. The Second Liberty Bond Act, as amended, referred to in subsec. (c), is classified to sections 745, 752–754b, 757, 757b–758, 760, 764–766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614.

§ 1489. Transfer of excess funds out of Rural Housing Insurance Fund and Rural Housing Direct Loan Account

Any sums in the Rural Housing Insurance Fund or the Rural Housing Direct Loan Account which the Secretary determines are in excess of amounts needed to meet the obligations and carry out the purposes of such Fund or Account shall be returned to miscellaneous receipts of the Treasury. July 15, 1949, c. 338, Title V, § 519, as added Aug. 10, 1965, Pub.L. 89–117, Title X, § 1006, 79 Stat. 501.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614.

§ 1490. Definitions

As used in this subchapter, the terms "rural" and "rural area" mean any open country, or any place, town, village, or city which is not part of or associated with an urban area and which (1) has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2,500 but not in excess of 5,500 if it is rural in character. July 15, 1949, c. 338, Title V, § 520, as added Aug. 10, 1965, Pub.L. 89–117, Title X, § 1007, 79 Stat. 502.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614.

§ 1490a. Loans to provide occupant-owned, rental, and cooperative housing for low and moderate income persons and families—Interest rates; determination that needs of applicant cannot be met with assistance from other sources

(a) Notwithstanding the provisions of sections 1472, 1487(a) and 1485 of this title, loans to persons of low or moderate income under section 1472 or 1487(a) (1) of this title, and loans under section 1485 of

this title to provide rental or cooperative housing and related facilities for persons and families of low or moderate income or elderly persons and elderly families, shall bear interest at a rate prescribed by the Secretary at not less than a rate determined annually by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, less not to exceed the difference between the adjusted rate determined by the Secretary of the Treasury and 1 per centum per annum: *Provided*, That such a loan may be made only when the Secretary determines the needs of the applicant for necessary housing cannot be met with financial assistance from other sources including assistance under section 1715z or 1715z—1 of Title 12: *Provided further*, That interest on loans under section 1472 or 1487(a) of this title to victims of natural disaster shall not exceed the rate which would be applicable to such loans under section 502 without regard to this section.

Location in rural areas; inclusion of qualified nonrural residents who will become rural residents

(b) Housing and related facilities provided with loans described in subsection (a) of this section shall be located in rural areas; and applicants eligible for such loans under section 1472 or 1487(a) (1) of this title, or for occupancy of housing provided with such loans under section 1485 of this title, shall include otherwise qualified nonrural residents who will become rural residents.

Reimbursement of Rural Housing Insurance Fund

(c) There shall be reimbursed to the Rural Housing Insurance Fund by annual appropriations the amounts by which nonprincipal payments made from the fund during each fiscal year to the holders of insured loans described in subsection (a) of this section exceed interest due from the borrowers during each year; and the Secretary from time to time may issue notes to the Secretary of the Treasury under section 1487(h) of this title to obtain amounts equal to such unreimbursed excess payments, pending the annual reimbursement by appropriation.
July 15, 1949, c. 338, Title V, § 521, as added Aug. 1, 1968, Pub.L. 90–448, Title X, § 1001, 82 Stat. 551.

Legislative History: For legislative history and purpose of Pub.L. 90–448, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1490b. Housing for rural trainees—Authorization; financial and technical assistance; selection of training sites and location of housing

(a) Upon the application of any State or political subdivision thereof, or any public or private nonprofit organization, the Secretary is authorized, after consultation with the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Housing and Urban Development, and the Director of the Office of Economic Opportunity, and after the Secretary determines that the housing and related facilities cannot reasonably be provided in any other way, to provide financial and technical assistance for the establishment, in rural areas, of housing and related facilities for trainees and their families who are residents of a rural area and have a rural background, while such trainees are enrolled and participating in training courses designed to improve their employment capability. The selection of training sites and location of housing shall be made with due regard to the economic viability of the area, and only after consideration of a labor area survey and full coordination among all Government agencies having primary responsibility for administering related programs.

Quality of housing and related facilities; design and location

(b) Housing and related facilities assisted under this section shall be safe and sanitary, constructed in the most economical manner, and

of modest design, giving due consideration to the purposes to be served and the needs of the occupants, and may, in the discretion of the Secretary, include mobile family quarters. Design and location shall be such as to facilitate, as feasible, the use of such housing and related facilities for other purposes when no longer needed for the primary purpose.

Contribution of land by applicant

(c) The applicant shall contribute the necessary land, or funds to acquire such land, from its own resources, including land acquired by donation or from funds repayable under subsection (e) of this section borrowed from other sources.

Conditions precedent to grant of financial assistance

(d) No financial assistance shall be made available under this section unless, to the extent and for the periods required by the Secretary, the applicant agrees that—

(1) such housing will be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by State or local law, or, in the absence of such standards, with requirements prescribed by the Secretary;

(2) priority shall be given at all times, in granting occupancy of such housing and facilities, to the trainees and their families described in subsection (a) of this section; and

(3) rentals charged them shall not exceed amounts approved by the Secretary after considering the portion of the actual total family income which the family can afford to pay for rent while meeting its other immediate needs during occupancy.

Advances; repayment; limitation on amount

(e) The Secretary may make advances pursuant to any contract for financial assistance under this section at such times and in such manner as may be specified in the contract. Such advances for the purchase of land shall be repayable with interest and within a period not to exceed thirty-three years and may be made upon such security, if any, as the Secretary requires. Advances for other purposes may be made repayable with or without interest or nonrepayable, as determined by the Secretary on the basis of the anticipated income and cost of operation of the housing and related facilities and the ability of each applicant to finance such facilities. Any advances shall be limited to cover the capital costs of constructing such facilities, plus interest on borrowings to cover such costs.

Sale of housing and related facilities to ineligible transferee or diversion to use other than primary purpose; repayment of advances; return of property to original condition

(f) Should housing and related facilities assisted pursuant to a contract under this section be sold to an ineligible transferee or diverted to use other than its primary purpose within a period specified in the contract, all advances made under such contract shall be repaid to the Secretary, up to the amount of the sales price or the fair value of the property as determined by the Secretary, whichever is higher, with interest from the date of the sale or diversion. If no suitable alternate use of the property is available, as determined by the Secretary, after the purpose of this section can no longer be served, the property shall be returned to its original condition by the recipient of the assistance.

Interest on advances

(g) Interest charged on advances made under this section shall be at a rate, prescribed by the Secretary, which shall be not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, less not to exceed the difference between the adjusted

rate determined by the Secretary of the Treasury and 1 per centum per annum, as determined by the Secretary.

Regulations

(h) The Secretary shall prescribe regulations to insure that Federal funds expended under this section are not wasted or dissipated.

Definitions

(i) As used in this section (1) the term "related facilities" shall include any necessary community rooms or buildings, infirmaries, utilities, access roads, water and sewer services, and the minimum fixed or movable equipment determined by the Secretary to be necessary to make the housing reasonably habitable by trainees and their families; and (2) the term "trainee" means any person receiving training under any federally assisted training program.

Authorization of appropriations

(j) There are authorized to be appropriated such sums as may be necessary to carry out this section.

July 15, 1949, c. 338, Title V, § 522, as added Aug. 1, 1968, Pub.L. 90–448, Title X, § 1002, 82 Stat. 551.

Legislative History: For legislative history and purpose of Pub.L. 90–448, see —. 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1490c. Mutual and self-help housing—Purpose

(a) The purposes of this section are (1) to make financial assistance available on reasonable terms and conditions in rural areas and small towns to needy low-income individuals and their families who, with the benefit of technical assistance and overall guidance and supervision, participate in approved programs of mutual or self-help housing by acquiring and developing necessary land, acquiring building materials, providing their own labor, and working cooperatively with others for the provision of decent, safe, and sanitary dwellings for themselves, their families, and others in the area or town involved, and (2) to facilitate the efforts of both public and private nonprofit organizations providing assistance to such individuals to contribute their technical and supervisory skills toward more effective and comprehensive programs of mutual or self-help housing in rural areas and small towns wherever necessary.

Contract authority; establishment of Self-Help Housing Land Development Fund; authorization to make loans; conditions of loan

(b) In order to carry out the purposes of this section, the Secretary of Agriculture (in this section referred to as the "Secretary") is authorized—

(1) (A) to make grants to, or contract with, public or private nonprofit corporations, agencies, institutions, organizations, and other associations approved by him, to pay part or all of the costs of developing, conducting, administering, or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and their families in carrying out mutual or self-help housing efforts; and

(B) to establish the Self-Help Housing Land Development Fund, referred to herein as the Self-Help Fund, to be used by the Secretary as a revolving fund for making loans, on such terms and conditions and in such amounts as he deems necessary, to public or private nonprofit organizations for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations, and cooperatives eligible for assistance under section 1715z or 1715z—1 of Title 12. Such a loan, with interest at a rate not to exceed 3 percent per annum, shall be repaid within a period not to exceed two years from the making of the loan, or within such additional period as may be authorized by the Secretary in any case as being necessary to carry out the purposes hereof; and

(2) to make loans, on such terms and conditions and in such amounts as he deems necessary, to needy low-income individuals participating in programs of mutual or self-help housing approved by him, for the acquisition and development of land and for the purchase of such other building materials as may be necessary in order to enable them, by providing substantially all of their own labor, and by cooperating with others participating in such programs, to carry out to completion the construction of decent, safe, and sanitary dwellings for such individuals and their families, subject to the following limitations:

(A) there is reasonable assurance of repayment of the loan;

(B) the amount of the loan, together with other funds which may be available, is adequate to achieve the purpose for which the loan is made;

(C) the credit assistance is not otherwise available on like terms or conditions from private sources or through other Federal, State, or local programs;

(D) the loan bears interest at a rate not to exceed 3 per centum per annum on the unpaid balance of principal, plus such additional charge, if any, toward covering other costs of the loan program as the Secretary may determine to be consistent with its purposes; and

(E) the loan is repayable within not more than thirty-three years.

Considerations for financial assistance

(c) In determining whether to extend financial assistance under paragraph (1) or (2) of subsection (b) of this section, the Secretary shall take into consideration, among other factors, the suitability of the area within which construction will be carried out to the type of dwelling which can be provided under mutual or self-help housing programs, the extent to which the assistance will facilitate the provision of more decent, safe, and sanitary housing conditions than presently exist in the area, the extent to which the assistance will be utilized efficiently and expeditiously, the extent to which the assistance will effect an increase in the standard of living of low-income individuals participating in the mutual or self-help housing program, and whether the assistance will fulfill a need in the area which is not otherwise being met through other programs, including those carried out by other Federal, State, or local agencies.

Definition

(d) As used in this section, the term "construction" includes the erection of new dwellings, and the rehabilitation, alteration, conversion, or improvement of existing structures.

Establishment of appropriate criteria and procedures for determining eligibility of applicants

(e) The Secretary is authorized to establish appropriate criteria and procedures in order to determine the eligibility of applicants for the financial assistance provided under this section, including criteria and procedures with respect to the periodic review of any construction carried out with such financial assistance.

Authorization of appropriations; termination date

(f) There are hereby authorized to be appropriated for each fiscal year commencing after June 30, 1968, and ending prior to July 1, 1973, such sums, not in excess of $5,000,000 for any such fiscal year, as may be necessary to carry out the provisions of this section. No grant or loan may be made or contract entered into under the authority of this section after June 30, 1973, except pursuant to a commitment or other obligation entered into pursuant to this section before that date.

Authorization of appropriations for purposes of subsection (b) (1) (B) of this section; deposit in Self-Help Fund; instruments and property acquired as assets of fund; deposit of repayments

(g) There are hereby authorized to be appropriated for the purposes of subsection (b) (1) (B) of this section not to exceed $1,000,000 for the fiscal year ending June 30, 1969, and not to exceed $2,000,000 for the fiscal year ending June 30, 1970. Any amount so authorized to be appropriated for any fiscal year which is not appropriated may be appropriated for any succeeding fiscal year or years. Amounts appropriated under this subsection shall be deposited in the Self-Help Fund, which shall be available without fiscal year limitation for making loans under subsection (b) (1) (B) of this section. Instruments and property acquired by the Secretary in or as a result of making such loans shall be assets of the Self-Help Fund. Sums received from the repayment of such loans shall be deposited in and be a part of the Self-Help Fund. July 15, 1949, c. 338, Title V, § 523, as added Aug. 1, 1968, Pub.L. 90–448, Title X, § 1005, 82 Stat. 553.

Legislative History: For legislative history and purpose of Pub.L. 90–448, see 1968 U.S.Code Cong. and Adm.News, p. —.

CHAPTER 8B.—PUBLIC WORKS OR FACILITIES

§ 1491. Declaration of policy

Transfer of Functions. Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development and agencies and officers thereof under this chapter incidental to or necessary for the performance of functions transferred by section 1(a) (1) of Reorg. Plan No. 2 of 1968 insofar as functions hereunder involve assistance specifically authorized for mass transportation facilities or equipment, see section 1(a) (2) of Reorg. Plan No. 2 of 1968, eff. June 20, 1968, 33 F.R. 6965, 81 Stat. —, set out as a note under section 1608 of Title 49, Transportation.

§ 1492. Public projects—Purchase of securities or obligations; loans; payment of operating expenses

(a) The Secretary of Housing and Urban Development is authorized (1) to purchase the securities and obligations of, or make loans to, municipalities and other political subdivisions and instrumentalities of one or more States (including public agencies and instrumentalities of one or more municipalities or other political subdivisions of one or more States), and Indian tribes to finance specific projects for public works or facilities under State, municipal, or other applicable law, and (2) to purchase the securities and obligations of, or make loans to, States, municipalities and other political subdivisions of States, public agencies and instrumentalities of one or more States, municipalities and political subdivisions of States, and public corporations, boards, and commissions established under the laws of any State, to finance the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service in urban areas, and for use in coordinating highway, bus, surface-rail, underground, parking and other transportation facilities in such areas. The facilities and equipment referred to in clause (2) may include land, but not public highways, and any other real or personal property needed for an economic, efficient, and coordinated mass transportation system. No such purchase or loan shall be made for payment of ordinary governmental or non-project operating expenses.

Restrictions and limitations; interest

(b) The powers granted in subsection (a) of this section shall be subject to the following restrictions and limitations:

* * * * * * * * * *

(2) No securities or obligations shall be purchased, and no loans shall be made, including renewals or extensions thereof, which have maturity dates in excess of forty years. Subject to such maximum maturity, the

Secretary in his discretion may provide for the postponement of the payment of interest on not more than 50 per centum of any financial assistance extended to an applicant under this section for a period up to ten years where (A) such assistance does not exceed 50 per centum of the development cost of the project involved, and (B) it is determined by the Secretary that such applicant will experience above-average population growth and the project would contribute to orderly community development, economy, and efficiency; and any amounts so postponed shall be payable with interest in annual installments during the remaining maturity of such assistance.

(3) Financial assistance extended under this section shall bear interest at a rate determined by the Secretary which shall be not more than the higher of (A) 3 per centum per annum, or (B) the total of one-half of 1 per centum per annum added to the rate of interest paid by the Secretary on funds obtained from the Secretary of the Treasury as provided in section 1493(a) of this title.

(4) No financial assistance shall be extended under clause (1) of subsection (a) of this section (A) to any municipality or other political subdivision having a population of fifty thousand or more (one hundred fifty thousand or more in the case of a community situated in an area designated as a redevelopment area under the Area Redevelopment Act or any Act supplementary thereto) according to the most recent decennial census, or; (B) to any public agency or instrumentality serving one or more municipalities, political subdivisions, or unincorporated areas in one or more States, unless each municipality, political subdivision, or unincorporated area to be served by the specific public work or facility for which assistance is sought under this section has a population less than the applicable figure under clause (A) according to such census. This paragraph shall not apply to any financial assistance to be extended under subsection (a) of this section for the purpose of financing any project for public works or facilities (i) in a community in or near which is located a research or development installation of the National Aeronautics and Space Administration, or (ii) to be initiated or accelerated as the result of a grant-in-aid from an allocation made by the President under section 2642 of this title, or (iii) to be provided in connection with the establishment of a new community approved under section 1749cc—1 of Title 12 or under sections 3901–3914 of this title.

Priority to applications of smaller municipalities

(c) In the processing of applications for financial assistance under clause (1) of subsection (a) of this section the Secretary shall give priority to applications of smaller municipalities for assistance in the construction of basic public works (including works for the storage, treatment, purification, or distribution of water; sewage, sewage treatment, and sewer facilities, and gas distribution systems) for which there is an urgent and vital public need. As used in this section, a "smaller municipality" means an incorporated or unincorporated town, or other political subdivision of a State, which had a population of less than ten thousand inhabitants at the time of the last Federal census, or an Indian tribe. Notwithstanding any other provision of this chapter, the Secretary may extend financial assistance, as otherwise authorized by clause (1) of subsection (a) of this section, to any private nonprofit corporation to finance the construction of works for the storage, treatment, purification, or distribution of water or the construction of sewage, sewage treatment, and sewer facilities, if such works or facilities are needed to serve a smaller municipality or rural area, and there is no existing public body able to construct and operate such works or facilities.

Loans for transportation facilities or equipment; termination date

(d) No loans may be made for transportation facilities or equipment, pursuant to clause (2) of subsection (a) of this section, unless the Secretary determines (1) that there is being actively developed (or has

been developed) for the urban or other metropolitan area served by the applicant a program, meeting criteria established by him, for the development of a comprehensive and coordinated mass transportation system; (2) that the proposed facilities or equipment can reasonably be expected to be required for such a system; and (3) if such program has not been completed, that there is an urgent need for the provision of the facilities or equipment to be commenced prior to the time that the program could reasonably be expected to be completed: *Provided*, That no such loan shall be made, except under a prior commitment, after June 30, 1963.

Grants-in-aid to public entities to accelerate public works; restrictions and limitations

(e) The Secretary is authorized to make a grant-in-aid from any allocation made for such purpose by the President under section 2642 of this title to any public entity described in clause (1) of subsection (a) of this section of not to exceed 50 per centum of the cost of construction of any project for public works or facilities, if such project would be eligible (without regard to the restrictions and limitations of subsections (b) and (c) of this section) for financial assistance under clause (1) of subsection (a) of this section in accordance with the rules and regulations of the Secretary (as in effect on September 14, 1962) relating to the types of public works and facilities to which such assistance may be extended.

Assistance for cultural centers; restrictions and limitations

(f) The restrictions and limitations set forth in subsection (c) of this section shall not apply to assistance to municipalities, other political subdivisions and instrumentalities of one or more States, and Indian tribes, for specific projects for cultural centers, including but not limited to, museums, art centers and galleries, and theaters and other physical facilities for the performing arts, which would be of cultural, educational, and informational value to the communities and areas where the centers would be located.

As amended Aug. 10, 1965, Pub.L. 89–117, Title XI, § 1107, 79 Stat. 503; Nov. 3, 1966, Pub.L. 89–754, Title IV, § 407, Title X, § 1009, 80 Stat. 1273, 1286; May 25, 1967, Pub.L. 90–19, § 12(b), (c), 81 Stat. 22, 23; Aug. 1, 1968, Pub.L. 90–448, Title IV, § 416(a), 82 Stat. 518.

References in Text. The Area Redevelopment Act, referred to in subsec. (b)(4), is classified to chapter 28 and section 1464 of this title, section 696 of Title 15, Commerce and Trade, and section 461 of Title 40, Public Buildings, Property and Works.

Section 2642 of this title, referred to in subsecs. (b)(4) was, in the original, "section 9 of the Public Works Acceleration Act." As introduced in the Senate on May 28, 1962, S. 2965 contained a section 9, however, subsequent amendments to S. 2965 prior to its enactment as Pub.L. 87–658 eliminated section 9 from the bill. Provisions in section 3 of Pub. L. 87–658 seem to be identical to those contained in section 9 of the original bill, and therefore, for purposes of classification, "section 9 of the Public Works Acceleration Act" has been translated as "section 2642 of this title", since this appears to be the intent of Congress.

1968 Amendment. Subsec. (b)(4). Pub.L. 90-448 made paragraph inapplicable to financial assistance extended for the purpose of financing any project for public works or facilities to be provided in connection with the establishment of a new community approved under sections 3901-3914 of this title.

1967 Amendment. Pub.L. 90–19, § 12(b), substituted "Secretary" for "Administrator" wherever appearing in subsecs. (b)(2), (3) and (c)–(e) of this section.

Subsec. (a). Pub.L. 90–19, § 12(c), substituted "Secretary of Housing and Urban Development" for "Housing and Home Finance Administrator".

1966 Amendment. Subsec. (b)(4). Pub.L. 89–754, § 407, added item (iii) in the second sentence.

Subsec. (f). Pub.L. 89–754, § 1009, added subsec. (f).

1965 Amendment. Subsec. (b)(4). Pub. L. 89-117, § 1107(b), removed the 150,000 population limit on the availability of public facility loans to communities located in or near National Aeronautics and Space Administration research and development installations, making such loans available to such communities without regard to population.

Subsec. (c). Pub.L. 89–117, § 1107(a), authorized the extending of financial assistance to private nonprofit corporations for the construction of sewer and water works needed to serve a smaller municipality or rural area if there are no existing public bodies to construct the needed facilities.

Transfer of Functions. Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development and agencies and officers thereof under this chapter incidental to or necessary for the performance of functions transferred by section 1(a) (1) of Reorg. Plan No. 2 of 1968 insofar as functions hereunder involve assistance specifically authorized for mass transportation facilities or equipment, see section 1(a) (2) of Reorg.

Plan No. 2 of 1968, eff. June 20, 1968, 33 F.R. 6965, 81 Stat. —, set out as a note under section 1608 of Title 49, Transportation.

Cross References. Urban Mass Transportation Act loans to States and local public agencies, considerations involving subsecs. (a), (b)(1)–(3), and (d) of this section, see section 1602 of Title 49, Transportation.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 89–754, 1966 U.S. Code Cong. and Adm.News, p. 3999; Pub. L. 90–19, 1967 U.S.Code Cong. and Adm. News, p. 1194; Pub.L. 90–448, 1968 U.S. Code Cong. and Adm.News, p. —.

§ 1493. Notes and obligations; forms and denominations; maturities; terms and conditions; interest rate; revolving fund

(a) In order to finance activities under this chapter, the Secretary is authorized and empowered to issue to the Secretary of the Treasury, from time to time and to have outstanding at any one time, notes and other obligations in an amount not to exceed $650,000,000: *Provided*, That, of the funds obtained through the issuance of such notes and other obligations, $600,000,000 shall be available only for purchases and loans pursuant to clause (1) of section 1492(a) of this title and $50,000,000 shall be available only for purchases and loans pursuant to clause (2) of such section. Such obligations shall be in such forms and denominations, have such maturities and be subject to such terms and conditions as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury which shall be not more than the higher of (1) 2½ per centum per annum, or (2) the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the issuance by the Secretary and adjusted to the nearest one-eighth of 1 per centum. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Secretary to be issued hereunder and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(b) Funds borrowed under this section and any proceeds shall constitute a revolving fund which may be used by the Secretary in the exercise of his functions under this chapter.

As amended May 25, 1967, Pub.L. 90–19, § 12(b), 81 Stat. 23.

1967 Amendment. Pub.L. 90-19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) and (b) of this section.

Transfer of Functions. Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development and agencies and officers thereof under this chapter incidental to or necessary for the performance of functions transferred by section 1(a) (1) of Reorg.Plan No. 2 of 1968 insofar as functions hereunder involve assistance specifically authorized for mass transportation facilities or equipment, see section 1(a) (2) of Reorg. Plan No. 2 of 1968, eff. June 20, 1968, 33 F.R. 6965, 81 Stat. —, set out as a note under section 1608 of Title 49, Transportation.

Cross References. Urban Mass Transportation Act loans to States and local public agencies, exercise by Administrator of authority under this section for, see section 1602 of Title 49, Transportation.

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

§ 1494. Functions, powers and duties of Secretary; administrative expenses

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in section 1749a of Title 12, except subsection (c) (2) of such

section. Funds obtained or held by the Secretary in connection with the performance of his functions under this chapter shall be available for the administrative expenses of the Secretary in connection with the performance of such functions.

As amended May 25, 1967, Pub.L. 90–19, § 12(b), 81 Stat. 23.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing.

Transfer of Functions. Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development and agencies and officers thereof under this chapter incidental to or necessary for the performance of functions transferred by section 1(a) (1) of Reorg. Plan No. 2 of 1968 insofar as functions hereunder involve assistance specifically authorized for mass transportation facilities or equipment, see section 1(a) (2) of Reorg. Plan No. 2 of 1968, eff. June 20, 1968, 33 F.R. 6965, 81 Stat. —, set out as a note under section 1608 of Title 49, Transportation.

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

§ 1495. Termination of authority to make loans under Reconstruction Finance Corporation Liquidation Act

Transfer of Functions. Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development and agencies and officers thereof under this chapter incidental to or necessary for the performance of functions transferred by section 1(a) (1) of Reorg. Plan No. 2 of 1968 insofar as functions hereunder involve assistance specifically authorized for mass transportation facilities or equipment, see section 1(a) (2) of Reorg. Plan No. 2 of 1968, eff. June 20, 1968, 33 F.R. 6965, 81 Stat. —, set out as a note under section 1608 of Title 49, Transportation.

§ 1496. Definition of "States"

Transfer of Functions. Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development and agencies and officers thereof under this chapter incidental to or necessary for the performance of functions transferred by section 1(a) (1) of Reorg. Plan No. 2 of 1968 insofar as functions hereunder involve assistance specifically authorized for mass transportation facilities or equipment, see section 1(a) (2) of Reorg. Plan No. 2 of 1968, eff. June 20, 1968, 33 F.R. 6965, 81 Stat. —, set out as a note under section 1608 of Title 49, Transportation.

§ 1497. Technical advisory services in budgeting, financing, planning and construction of community facilities; appropriations

The Secretary is authorized to establish technical advisory services to assist municipalities and other political subdivisions and instrumentalities, and Indian tribes in the budgeting, financing, planning, and construction of community facilities. There are authorized to be appropriated such sums as may be necessary, together with any fees that may be charged, to cover the cost of such services.

As amended May 25, 1967, Pub.L. 90–19, § 12(b), 81 Stat. 23.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator".

Transfer of Functions. Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development and agencies and officers thereof under this chapter incidental to or necessary for the performance of functions transferred by section 1(a) (1) of Reorg. Plan No. 2 of 1968 insofar as functions hereunder involve assistance specifically authorized for mass transportation facilities or equipment, see section 1(a) (2) of Reorg. Plan No. 2 of 1968, eff. June 20, 1968, 33 F.R. 6965, 81 Stat. —, set out as a note under section 1608 of Title 49, Transportation.

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

CHAPTER 8C.—OPEN-SPACE LAND, URBAN BEAUTIFICATION, AND HISTORIC PRESERVATION

§ 1500. Congressional declaration of findings and purpose

(a) The Congress finds that a combination of economic, social, governmental, and technological forces have caused a rapid expansion of the

Nation's urban areas, which has created critical problems of service and finance for all levels of government and which, combined with a rapid population growth in such areas, threatens severe problems of urban and suburban living, including the loss of valuable open-space land in such areas, for the preponderant majority of the Nation's present and future population.

(b) The Congress further finds that there is an urgent need both for the additional provision of parks and other open-space areas in the developed portions of the Nation's urban areas and for greater and better coordinated local efforts to beautify and improve open space and other public land throughout urban areas to facilitate their increased use and enjoyment by the Nation's urban population.

(c) The Congress further finds that there is a need for timely action to preserve and restore areas, sites, and structures of historic or achitectural value in order that these remaining evidences of our past history and heritage shall not be lost or destroyed through the expansion and development of the Nation's urban areas.

(d) It is the purpose of this chapter to help curb urban sprawl and prevent the spread of urban blight and deterioration, to encourage more economic and desirable urban development, to assist in preserving areas and properties of historic or architectural value, and to help provide necessary recreational, conservation, and scenic areas by assisting State and local governments in taking prompt action to (1) provide, preserve, and develop open-space land which is essential to the proper long-range development and welfare of the Nation's urban areas, in accordance with plans for the allocation of such land for open-space uses, (2) acquire, improve, and restore areas, sites, and structures of historic or achitectural value, and (3) beautify and improve open space and other public urban land, in accordance with programs to encourage and co-ordinate local public and private efforts toward this end.

As amended Pub.L. 89–117, Title IX, § 901(b), (c), Aug. 10, 1965, 79 Stat. 494; Pub.L. 89–754, Title VI, § 605(b), (c), Nov. 3, 1966, 80 Stat. 1279.

1966 Amendment. Subsec. (c). Pub.L. 89–754, § 605(b), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub.L. 89–754, § 605(b), (c), redesignated former subsec. (c) as (d), and stated an additional purpose of this chapter to be to assist in preserving areas and properties of historic or architectural value, added cl. (2), and redesignated former cl. (2) as (3), respectively.

1965 Amendment. Subsec. (b). Pub.L. 89–117, § 901(b), redesignated former subsec. (b) as subsec. (c) and added subsec. (b).

Subsec. (c). Pub.L. 89–117, § 901(b), (c), redesignated former subsec. (b) as subsec. (c) and, in subsec. (c) as so redesignated, substituted "(1) provide, preserve, and develop" for "preserve" and "uses, and (2) beautify and improve open space and other public urban land, in accordance with programs to encourage and co-ordinate local public and private efforts toward this end" for "purposes".

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 89–754, 1966 U.S. Code Cong. and Adm.News, p. 3999.

§ 1500a. Grants for preservation and development of open-space land —Authorization; limitation on amount of grant; full faith and credit

(a) In order to encourage and assist in the timely acquisition and development of land to be used as permanent open-space land, as defined herein, the Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to enter into contracts to make grants to States and local public bodies to help finance the acquisition of title to, or other permanent interests in, such land, and the development, for open-space uses, of land acquired under this chapter. The amount of any such grant shall not exceed 50 per centum of the total cost, as approved by the Administrator, of such acquisition and development. The faith of the United States is pledged to the payment of all grants contracted for under this chapter.

Authorization of appropriations

(b) There are authorized to be appropriated, for the purpose of making grants under this chapter, not to exceed $310,000,000 prior to July 1,

1969, and not to exceed $460,000,000 prior to July 1, 1970. Any amounts appropriated under this section shall remain available until expended.

Restrictions on use of grants

(c) No grants under this chapter shall be used to defray ordinary State or local governmental expenses, or to help finance the acquisition by a public body of land located outside the urban area for which it exercises (or participates in the exercise of) responsibilities consistent with the purpose of this chapter.

Determination of further terms and conditions for assistance

(d) The Secretary may set such further terms and conditions for assistance under this chapter as he determines to be desirable.

Review of applications; consultation with Secretary of the Interior; exchange of information

(e) The Secretary shall consult with the Secretary of the Interior on the general policies to be followed in reviewing applications for grants under this chapter. To assist the Secretary in such review, the Secretary of the Interior shall furnish him (1) appropriate information on the status of national and statewide recreation and historic preservation planning as it affects the areas to be assisted with such grants, and (2) the current listing of any districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture which may be contained on a National Register maintained by the Secretary of the Interior pursuant to other provisions of law. The Secretary shall provide current information to the Secretary of the Interior from time to time on significant program developments.

As amended Pub.L. 89–117, Title IX, §§ 902(a), (b), 903, 904, 909(a)–(c), Aug. 10, 1965, 79 Stat. 495, 497; Pub.L. 89–754, Title VI, § 605(d), Nov. 3, 1966, 80 Stat. 1279; May 25, 1967, Pub.L. 90–19, § 18(c), (d), 81 Stat. 25; Pub.L. 90–448, Title VI, § 606(a), Aug. 1, 1968, 82 Stat. 534.

1968 Amendment. Subsec. (b). Pub.L. 90—448 authorized appropriations of not more than $460,000,000 prior to July 1, 1970, and eliminated provisions which permitted the secretary to contract to make grants under section 1500c-1 of this title aggregating not more than $64,000,000, and grants under section 1500c-2 of this title aggregating not more than $36,000,000.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a), (b), and (d) of this section.

Subsec. (a). Pub.L. 90–19 substituted "Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary')" for "Housing and Home Finance Administrator (hereinafter referred to as the 'Administrator')".

1966 Amendment. Subsec. (e). Pub.L. 89–754 substituted "Secretary" for "Administrator" wherever appearing, designated existing provisions as cl. (1), substituted therein "national and statewide recreation and historic preservation planning as it affects the areas to be assisted with such grants" for "recreational planning for the areas to be assisted with the grants", and added cl. (2).

1965 Amendment. Subsec. (a). Pub.L. 89–117, §§ 902(a), 903, and 909(b), inserted development of open space land as one of the purposes for which grants were to be made, added the development, for open space uses, of land acquired under this chapter as one of the uses to which granted funds could be put, raised from 20 percent to 50 percent of total cost the maximum grant allowable, removed the proviso increasing the maximum grant to 30 percent in the case of a grant to a public body exercising open space responsibility for all or a substantial part of the urban area, and struck out requirement that local public bodies to which funds were granted be acceptable to the Administrator as capable of carrying out the provisions of the chapter.

Subsec. (b). Pub.L. 89–117, § 904, substituted "$310,000,000" for "$75,000,000" and added proviso that, of that sum, no more than $64,000,000 could be for grants under section 1500c—1 of this title and no more than $36,000,000 could be for grants under section 1500c—2 of this title.

Subsec. (c). Pub.L. 89–117, § 902(b), removed development costs from the list of uses to which grants may not be put.

Subsec. (e). Pub.L. 89–117, § 909(c), substituted "assisted" for "served by the open-space land acquired".

Planning and Acquisition of Land. Coordinating planning and acquisition of land under outdoor recreation and open space programs, see Ex.Ord.No.11237, July 27, 1965, 30 F.R. 9433, set out as a note under section 460*l*—8 of Title 16, Conservation.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 89–754, 1966 U.S. Code Cong. and Adm.News, p. 3999; Pub. L. 90–19, 1967 U.S.Code Cong. and Adm. News, p. 1194; Pub.L. 90–448, 1968 U.S. Code Cong. and Adm.News, p. —.

§ 1500b. Planning requirements

(a) The Administrator shall enter into contracts to make grants under sections 1500a and 1500c—1 of this title only if he finds that such assistance is needed for carrying out a unified or officially coordinated program, meeting criteria established by him, for the provision and development of open-space land as part of the comprehensively planned development of the urban area.

(b) In extending financial assistance under this chapter, the Secretary shall take such action as he deems appropriate to assure that local governing bodies are preserving a maximum of open-space land, with a minimum of cost, through the use of existing public land; the use of special tax, zoning, and subdivision provisions; and the continuation of appropriate private use of open-space land through acquisition and leaseback, the acquisition of restrictive easements, and other available means.

As amended Pub.L. 89–117, Title IX, § 905, Aug. 10, 1965, 79 Stat. 495; May 25, 1967, Pub.L. 90–19, § 18(c), 81 Stat. 25.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) and (b) of this section.

1965 Amendment. Subsec. (a). Pub.L. 89–117 substituted provisions which required that, for grants under sections 1500a and 1500c—1 of this title, there be a unified or officially coordinated program for the provision and development of open-space land as part of the comprehensively planned development of the urban area for provisions which required only that, for grants for acquisition of land under the entire chapter, the use of the land for permanent open space be important and which limited the definition of comprehensive planning to the definition found in section 461(d) of Title 40.

Planning and Acquisition of Land. Coordinating planning and acquisition of land under outdoor recreation and open space programs, see Ex.Ord.No.11237, July 27, 1965, 30 F.R. 9433, set out as a note under section 460*l*—8 of Title 16, Conservation.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 90–19, 1967 U.S. Code Cong. and Adm.News, p. 1194.

§ 1500c. Conversions to other uses

No open-space land for the acquisition of which a grant has been made under this chapter shall, without the approval of the Secretary, be converted to uses other than those originally approved by him. The Secretary shall approve no conversion of land from open-space use unless he finds that such conversion is essential to the orderly development and growth of the urban area involved and is in accord with the then applicable comprehensive plan, meeting criteria established by him. The Secretary shall approve any such conversion only upon such conditions as he deems necessary to assure the substitution of other open-space land of at least equal fair market value and of as nearly as feasible equivalent usefulness and location.

As amended Pub.L. 89–117, Title IX, § 909(d), Aug. 10, 1965, 79 Stat. 497; Pub.L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing.

1965 Amendment. Pub.L. 89–117 limited the prohibition against conversion without the Administrator's approval by providing that such prohibition applied only to lands acquired with grant funds under this chapter.

Legislative History: For legislative history and purpose of Pub.L. 89–117, see 1965 U.S.Code Cong. and Adm.News, p. 2614. See, also, Pub.L. 90–19, 1967 U.S. Code Cong. and Adm.News, p. 1194.

§ 1500c—1. Grants for provision of open-space land in built-up urban areas

The Secretary is further authorized to enter into contracts to make grants to States and local public bodies to help finance the acquisition of title to, or other permanent interests in, developed land in built-up portions of urban areas to be cleared and used as permanent open-space land. The Secretary shall make such grants only where the local governing body determines that adequate open-space land cannot effectively be provided through the use of existing undeveloped or predominantly undeveloped land. Grants under this section shall not exceed 50 per centum of the

cost of acquiring such interests and of necessary demolition and removal of improvements.

Pub.L. 87–70, Title VII, § 705, as added Pub.L. 89–117, Title IX, § 906, Aug. 10, 1965, 79 Stat. 495, and amended Pub.L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing.

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923. See, also, Pub.L. 89–117, 1965 U.S. Code Cong. and Adm.News, p. 2614; Pub. L. 90–19, 1967 U.S.Code Cong. and Adm. News, p. 1194.

§ 1500c—2. Grants for urban beautification and improvement

The Secretary is authorized to enter into contracts to make grants, as herein provided, to States and local public bodies to assist in carrying out local programs for the greater use and enjoyment of open-space and other public land in urban areas. The Secretary shall establish criteria for such programs to assure that each program (1) represents significant and effective efforts, involving all available public and private resources, for the beautification of such land and its improvement for open-space uses; and (2) is important to the comprehensively planned development of the locality. Grants made under this section shall not exceed 50 per centum of the amount by which the cost of the activities carried on by an applicant during a fiscal year under an approved program exceeds its usual expenditures for comparable activities.

Pub.L. 87–70, Title VII, § 706, as added Pub.L. 89–117, Title IX, § 906, Aug. 10, 1965, 79 Stat. 496, and amended Pub.L. 89–754, Title VI, § 605 (e), Nov. 3, 1966, 80 Stat. 1280; Pub.L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing.

1966 Amendment. Pub.L. 89–754 struck out proviso which authorized the Administrator to use not to exceed $5,000,000 of the sum authorized for contracts under this section for the purpose of entering into contracts to make grants in amounts not to exceed 90 per centum of the cost of activities which he determined had special value in developing and demonstrating new and improved methods and materials for use in carrying out the purposes of this section, now covered by section 1500d(c) of this title.

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923. See, also, Pub.L. 89–117, 1965 U.S. Code Cong. and Adm.News, p. 2614; Pub. L. 89–754, 1966 U.S.Code Cong. and Adm. News, p. 3999; Pub.L. 90–19, 1967 U.S.Code Cong. and Adm.News, p. 1194.

§ 1500c—3. Labor standards

(a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of grants under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary shall not approve any such grant without first obtaining adequate assurance that these labor standards will be maintained upon the construction work.

(b) The Secretary of Labor shall have, with respect to the labor standards specified in subsection (a), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 276c of Title 40. Pub.L. 87–70, Title VII, § 707, as added Pub.L. 89–117, Title IX, § 907, Aug. 10, 1965, 79 Stat. 496, and amended Pub.L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25.

References in Text. The Davis-Bacon Act, as amended, referred to in subsec. (a), is classified to sections 276a to 276a—5 of Title 40, Public Buildings, Property and Works.

Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), referred to in subsec. (b), is set out in the Appendix to Title 5, Government Organization and Employees.

1967 Amendment. Subsec. (a). Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing.

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923. See, also, Pub.L. 89–117, 1965 U.S. Code Cong. and Adm.News, p. 2614; Pub. L. 90–19, 1967 U.S.Code Cong. and Adm. News, p. 1194.

§ 1500d. Technical assistance, studies, and publication of information

(a) In order to carry out the purpose of this chapter the Secretary is authorized to provide technical assistance to State and local public bodies and to undertake such studies and publish such information, either directly or by contract, as he shall determine to be desirable.

(b) The Secretary is authorized to use during any fiscal year not to exceed $125,000 of the funds available for grants under this chapter to undertake such studies and publish such information. Nothing contained in this section shall limit any authority of the Secretary under any other provision of law.

(c) Notwithstanding any other provision of this chapter, the Secretary may use not to exceed $10,000,000 of the sum authorized for contracts under this chapter for the purpose of entering into contracts to make grants in amounts not to exceed 90 per centum of the cost of activities which he determines have special value in developing and demonstrating new and improved methods and materials for use in carrying out the purposes of this chapter.

Pub.L. 87–70, Title VII, § 708, formerly § 705, June 30, 1961, 75 Stat. 185, renumbered and amended Pub.L. 89–117, Title IX, §§ 906, 908, Aug. 10, 1965, 79 Stat. 495, 497; Pub.L. 89–754, Title VI, § 605(f), Nov. 3, 1966, 80 Stat. 1280; Pub.L. 90–19, § 18(c), May 25, 1967, 81 Stat. 25; Pub.L. 90–448, Title VI, § 606(b), Aug. 1, 1968, 82 Stat. 534.

1968 Amendment. Subsec. (b). Pub.L. 90–448 substituted "$125,000" for "$50,000."

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) and (b) of this section.

1966 Amendment. Pub.L. 89–754 designated existing provisions as subsecs. (a) and (b) and redesignated former proviso of section 1500c—2 of this title as subsec. (c), substituting therein "Secretary" and "$10,000,000" for "Administrator" and "$5,000,000", respectively.

1965 Amendment. Pub.L. 89–117, § 908, substituted provision authorizing the Administrator to use during any fiscal year not to exceed $50,000 of the funds available for grants under this chapter for studies and publication of information for provision authorizing the appropriation, out of moneys in the Treasury not otherwise appropriated, of such amounts as may be necessary to provide for assistance, studies, and publication.

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923. See, also, Pub.L. 89–117, 1965 U.S. Code Cong. and Adm.News, p. 2614; Pub. L. 89–754, 1966 U.S.Code Cong. and Adm. News, p. 3999; Pub.L. 90–19, 1967 U.S.Code Cong. and Adm.News, p. 1194; Pub.L. 90–448, 1968 U.S.Code Cong. and Adm. News, p. —.

§ 1500d—1. Grants for historic preservation

The Secretary is authorized to enter into contracts to make grants to States and local public bodies to assist in the acquisition of title to or other permanent interests in areas, sites, and structures of historic or architectural value in urban areas, and in their restoration and improvement for public use and benefit, in accord with the comprehensively planned development of the locality. The amount of any such grant shall not exceed 50 per centum of the total cost, as approved by the Secretary, of the assisted activities. The remainder of such cost shall be provided from non-Federal sources.

Pub.L. 87–70, Title VII, § 709, as added Pub.L. 89–754, Title VI, § 605(g), Nov. 3, 1966, 80 Stat. 1280.

Criteria for Grants for Historic Preservation. Section 605(h) of Pub.L. 89–754 provided that: "Commencing three years after the date of the enactment of this Act [Nov. 3, 1966], no grant shall be made (except pursuant to a contract or commitment entered into less than three years after such date) under section 709 of the Housing Act of 1961 [this section] or section 701(h) of the Housing Act of 1954 [section 461(h) of Title 40], or under section 103 of the Housing Act of 1949 [section 1453 of this title] to the extent that it is to be used for historic or architectural preservation, except with respect to districts, sites, buildings, structures, and objects which the Secretary of Housing and Urban Development finds meet criteria comparable to those used in establishing the National Register maintained by the Secretary of the Interior pursuant to other provisions of law."

Legislative History: For legislative history and purpose of Pub.L. 89–754, see 1966 U.S.Code Cong. and Adm. News, p. 3999.

§ 1500e. Definitions

As used in this chapter—

* * * * * * * * *

(2) The term "urban area" means any area which is urban in character, including those surrounding areas which, in the judgment of the Secretary, form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

* * * * * * * * * *

(4) The term "open-space uses" means any use of open-space land for (A) park and recreational purposes, (B) conservation of land and other natural resources, or (C) historic or scenic purposes.

Pub.L. 87–70, Title VII, § 710, formerly § 706, June 30, 1961, 75 Stat. 185, renumbered § 709 and amended Pub.L. 89–117, Title IX, §§ 902(c), 906, Aug. 10, 1965, 79 Stat. 495, renumbered § 710, Pub.L. 87–754, Title VI, § 605(g), Nov. 3, 1966, 80 Stat. 1280; amended May 25, 1967, Pub.L. 90–19, § 18(c), 81 Stat. 25.

1967 Amendment. Subd. (2). Pub.L. 90–19 substituted "Secretary" for "Administrator".

1965 Amendment. Pub.L. 89–117, § 902 (c), added definition of "open-space uses".

Legislative History: For legislative history and purpose of Pub.L. 87–70, see 1961 U.S.Code Cong. and Adm.News, p. 1923. See, also, Pub.L. 89–117, 1965 U.S.Code Cong. and Adm.News, p. 2614; Pub.L. 90–19, 1967 U.S.Code Cong. and Adm.News, p. 1194.

CHAPTER 9.—HOUSING OF PERSONS ENGAGED IN NATIONAL DEFENSE

§ 1501. Cooperation between departments; definitions; limitation of projects

Delegation of Functions. Functions of the President under this section and sections 1502–1505, to determine that housing administered or assisted by the Public Housing Administration is no longer needed to assure the availability of dwellings for persons engaged in national-defense activities, delegated to the Housing and Home Finance Administrator, see section 1(4) of Ex.Ord.No.11196, Feb. 2, 1965, 30 F.R. 1171, set out as a note under section 1701c of Title 12, Banks and Banking.

§ 1553. Removal by Administrator of certain housing of temporary character; exceptions for local communities; report to Congress

Supplementary Index to Notes

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3. Transfer to other department

This section relating to General Services Administrator's removal of certain temporary government housing was not applicable to housing units which had been constructed on land which was subsequently transferred to the Department of the Army and later declared surplus. Town of Ayer v. Lazzaro, D.C.Mass.1964, 234 F.Supp. 372.

§ 1592o. Powers of Surgeon General of Public Health Service

Abolition of Office of Surgeon General. The Office of the Surgeon General was abolished by section 3 of 1966 Reorg.Plan No. 3 eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and all functions thereof were transferred to the Secretary of Health, Education, and Welfare by section 1 of 1966 Reorg.Plan No. 3, set out as a note under section 202 of this title.

§ 1594. Contracts for construction—Contract provisions; competitive bids

(a) The Secretary of Defense or his designee is authorized to enter into contracts with any eligible bidder to provide for the construction of urgently needed housing on lands owned or leased by the United States and situated on or near a military reservation or installation for the purpose of providing suitable living accommodations for military personnel

of the armed services assigned to duty at the military installation at or in the area where the housing is situated. Any such contract shall provide that each housing unit in the project shall be placed under the control of the Secretary of Defense, or his designee, as soon as the unit is available for occupancy as determined by the Secretary of Housing and Urban Development. Any such contract shall also provide that, except for stock held by the Secretary of Housing and Urban Development, the capital stock of the mortgagor (where the mortgagor is a corporation) be transferred to the Secretary of Defense, or his designee, when the housing has been completed as determined by the Secretary of Housing and Urban Development. Any such contract shall contain such terms and conditions as the Secretary of Defense may determine to be necessary to protect the interests of the United States. Any such contract shall provide for the furnishing by the contractor of a performance bond and a payment bond with a surety or sureties satisfactory to the Secretary of Defense, or his designee, and the furnishing of such bonds shall be deemed a sufficient compliance with the provisions of section 270a of Title 40, and no additional bonds shall be required under such section. Before the Secretary of Defense shall enter into any contract as authorized by this section for the construction of housing, he shall invite the submission of competitive bids after advertising in the manner prescribed in section 152 of Title 41.

Definition of "eligible bidder"

(b) For the purposes of this subchapter, the term "eligible bidder" means a person, partnership, firm, or corporation determined by the Secretary of Defense after consultation with the Secretary of Housing and Urban Development (1) to be qualified by experience and financial responsibility to construct housing of the type described in subsection (a) of this section, and (2) to have submitted the lowest acceptable bid.

Acquisition of capital stock of property covered by mortgage

(c) Notwithstanding any other provision of law, the Secretary of Defense or his designee is authorized to acquire the capital stock of mortgagors holding property covered by a mortgage insured under title VIII of the National Housing Act, as amended by the Housing Amendments of 1955, and to exercise the rights as holder of such capital stock during the life of such mortgage and, upon the termination of the mortgage, to dissolve the corporation; to guarantee the payment of notes or other legal instruments required by the Secretary of Housing and Urban Development of such mortgagors; to make payments thereon; and to guarantee and indemnify the Armed Services Housing Mortgage Insurance Fund against loss in cases where so required. All housing facilities placed under the control of the Secretary of Defense pursuant to the provisions of this subchapter shall be deemed to be housing facilities under the jurisdiction of the military department to which they are assigned.

Opinion as to title to property; guarantee; title search and title insurance

(d) On request by the Secretary of Defense, the Attorney General shall furnish to the Secretary of Defense, or his designee, an opinion as to the sufficiency of title to any property on which it is proposed to construct housing, or on which housing has been constructed, under this section. If the opinion of the Attorney General is that the title to any such property is good and sufficient, the Secretary of Defense is authorized to guarantee, or enter into a commitment to guarantee, the mortgagee, under a mortgage on such property which is insured under sections 1748–1748g and 1748h—1 to 1748h—3 of Title 12, against any losses that may thereafter arise from adverse claims to title. None of the proceeds of any mortgage loan hereafter insured under such sections 1748–1748g and 1748h—1 to 1748h—3 of Title 12 shall be used for title search and title insurance costs: *Provided*, That if the Secretary of Defense, or his des-

ignee, determines in the case of any housing project, that the financing of the construction of such project is impossible unless title insurance is provided, the Secretary may provide for the payment of the reasonable costs necessary for obtaining title search and title insurance. Any payments by the Secretary of Defense hereunder shall be made from the revolving fund established under section 1594a(g) of this title. Any determination by the Secretary of Defense under the foregoing proviso shall be set forth in writing, together with the reasons therefor. The Committees on Armed Services of the Senate and House of Representatives shall be promptly notified of each such determination, and of the amount of any payment made by the Secretary of Defense for title search and title insurance costs. As amended May 25, 1967, Pub.L. 90–19, § 12(d), (h) (1)–(3), 81 Stat. 23, 24.

1967 Amendment. Pub.L. 90–19, § 12 (d), substituted "Secretary of Housing and Urban Development" for "Commissioner" wherever appearing in subsecs. (a)–(c)

Subsec. (a). Pub.L. 90–19, § 12(h) (1), substituted "Secretary of Defense" for "Secretary" in the fourth and sixth sentences.

Subsec. (b). Pub.L. 90–19, § 12(h) (2), substituted "Secretary of Defense" for "Secretary".

Subsec. (d). Pub.L. 90–19, § 12(h) (3), substituted "Secretary of Defense" for "Secretary" in the last three sentences.

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

Supplementary Index to Notes

1. Construction with other laws

Autrey v. Williams & Dunlap, 210 F. Supp. 491, main volume, affirmed in part, reversed in part on other grounds 343 F. 2d 730.

The Capehart Act, section 1594 et seq. of this title and section 1748a et seq. of Title 12, construed with 1956 amendment providing for performance and payment bonds satisfactory to Secretary of Defense, and providing that furnishing of such bonds should be deemed sufficient compliance with provisions of Miller Act, sections 270a–270d of Title 40, authorized Secretary of Defense to require inclusion of so-called dual notice provisions in standard Capehart Act payment bond, thus making inapplicable to such bond the so-called single notice provisions in the Miller Act, sections 270a–270d of Title 40. Continental Cas Co. v. C. O. Brand, Inc., C.A.Tex.1966, 355 F.2d 969, certiorari denied 87 S.Ct. 53, 385 U.S. 825, 17 L.Ed.2d 62.

Miller Act provision, section 270b of Title 40, vesting federal courts with exclusive jurisdiction over actions on bonds thereunder, has application to Capehart Act bonds and vests jurisdiction over action thereon exclusively in federal court. Koppers Co. v. Continental Cas. Co., C.A. Mo.1964, 337 F.2d 499.

Time limitation on commencement of suit under provisions of Miller Act, sections 270a–270d of Title 40, were applicable and barred Capehart Act suit, under section 1594 of this title, filed by furnisher of architectural forms and related labor and equipment more than one year after date on which last labor was performed, notwithstanding contrary terms of limitation incorporated in bonds required and furnished by provisions of Capehart Act. Economy Forms Corp. v. Trinity Universal Ins. Co., D.C.N.D.1964, 234 F.Supp. 930, affirmed 340 F.2d 613, certiorari denied 86 S.Ct. 30, 382 U.S. 813, 15 L.Ed.2d 61

Except as modified by language of section 1594 of this title relating to furnishing of bonds, Miller Act, sections 270a–270d of Title 42, applies from that point forward on Capehart bonds. Griners' & Shaw, Inc. v. Federal Ins. Co., D.C.S.C. 1964, 234 F.Supp. 753.

Rules to be applied to factual situations involved in various cases, under this subchapter will be the rules of decision developed under the Heard and Miller Act, sections 270a–270d of Title 40. Triangle Elec. Supply Co. v. Mojave Elec. Co., D.C.Mo.1964, 234 F.Supp. 293, supplemented 238 F.Supp. 815.

Substantive rights of subcontractors on government construction projects are not defined solely by provisions of Capehart bonds, but consideration must also be given to substantive rights established by the Miller Act, sections 270a–270d of Title 40. Fine v. Travelers Indem. Co., D.C.Mo.1964, 233 F.Supp. 672.

Limitations of liability in a Capehart bond affect substantive rights and cannot be construed in a manner different from those imposed by the Miller Act, sections 270a–270d of Title 40. Id.

Subcontractors of a subcontractor of prime contractor on a government housing project had a right of action on a Capehart bond either as "claimants" within definition thereof in the bond, or under definition of liability as set forth in the Miller Act, sections 270a–270d of Title 40. Id.

Procedurally in such matters as notice and venue, actions on bonds under this subchapter are governed by body of law developed independently of the Miller Act, sections 270a–270d of Title 40. B. C. Richter Contracting Co. v. Continental Cas. Co., 1964, 41 Cal.Rptr. 98, 230 C.A.2d 491.

From the standpoint of surety's substantive responsibility for liabilities of its principal, federal decisions under Miller Act, sections 270a–270d of Title 40, are applicable in actions on bonds under this subchapter. Id.

Where interest rates increase between the time a bid is accepted and financing is secured by a contractor under Capehart Amendment, and financing can

be secured at the rate specified only at greatly increased expense, the contractor is not excused from performing the contract. Miller v. U. S., 1963, 161 Ct.Cl. 455.

2. Purpose

This section was not intended to effect a change in methods of acquisition of jurisdiction of person in an action based on construction bond. Continental Cas. Co. v. Allsop Lumber Co., C.A.Mo.1964, 336 F.2d 445, certiorari denied 85 S.Ct. 662, 379 U.S. 968, 13 L.Ed.2d 561.

In enacting the Capehart Housing Act, section 1594 et seq. of this title and section 1748b et seq. of Title 12, Congress intended, among other things, to give to the Secretary of Defense or his designee, discretion in determining the extent to which utilities, streets, and similar improvements lying outside the boundaries of the mortgaged properties might be included in housing contracts to be financed through insured mortgages, as well as the extent to which such utilities and improvements should be constructed under the contracts paid for with appropriated funds. Centex Construction Co. v. U. S., 1963, 162 Ct.Cl. 211.

3. Law governing

Autrey v. Williams & Dunlap, 210 F. Supp. 491, main volume, affirmed in part, reversed in part on other grounds 343 F. 2d 730.

Provision of contract between prime contractor and electrical subcontractor that contract should be interpreted pursuant to California laws was not effective as regards performance and payment bonds furnished to prime contractor by surety on behalf of subcontractor, and controlling law in action by prime contractor against surety on bonds was federal law developed under this section and Miller Act, sections 270–270d of Title 40. National Union Fire Ins. Co. of Pittsburgh, Pa. v. D & L Const. Co., C.A.Mo.1965, 353 F.2d 169, certiorari denied 86 S.Ct. 1462, 384 U.S. 941, 16 L.Ed.2d 539.

Where action by prime contractor against defaulting subcontractor's surety on performance and payment bonds was brought in federal District Court in Missouri, and construction work was to be performed in Missouri, and there was no contract provision for payment of interest, interest, to extent stipulation was not binding as to interest, should be determined on basis of Missouri law. Id.

In absence of specification relating to interest with respect to materials supplied for military base housing project, state law governed. L & E Co. v. U. S. ex rel. Kaiser Gypsum Co., C.A.Cal. 1965, 351 F.2d 880.

Extent of surety's liability on contractor's bonds under this subchapter turned on application of federal statutes and federal court decisions supplied controlling rules. B. C. Richter Contracting Co. v. Continental Cas. Co., 1964, 41 Cal. Rptr. 98, 230 C.A.2d 491.

4. Bonds generally

Purpose of requirement that private contractors furnish payment bond for construction projects under this section is to furnish protection to those furnishing labor and material in construction of projects. Bushman Const. Co. v. Conner, D.C.Colo.1966, 260 F.Supp. 779.

Fact that subcontractor's bond, as actually distinguished from a statutory prime contractor's bond, may be involved in particular bond case under this subchapter presents a factual difference but not a valid ground for legal distinction, and subcontractor's bond and a subcontractor are to be both considered in light of the general contract and statute. Tringle Elec. Supply Co. v. Mojave Elec. Co., D.C.Mo.1964, 234 F.Supp. 293, supplemented 238 F.Supp. 815.

The separate payment bonds issued by surety to subcontractor on project under this subchapter were the result of a mistake which should not be held to increase limits of liability established by performance bonds written on subcontract in full amount of subcontract price. Id.

Payment and performance bond issued by surety for subcontractor on project under this subchapter could not be read in isolation but must be considered in light of requirements of prime contract, this subchapter authorizing government construction and in the light of the obvious intention of the parties at time bonds were written. Id.

Court must apply to subcontractor's bonds under this subchapter the rules of construction which have been held to be applicable to subcontractor's bonds written on projects under the Miller Act, sections 270a–270d of Title 40. Id.

It is intention of subcontractor and its surety on project under this subchapter to accept and bind the liability that the prime contractor intended to protect itself against to the extent that prime contractor is liable for payment of materials furnished to a subcontractor. Id.

Capehart Act bond is not controlled by Miller Act, sections 270a-270d of Title 40. Robertson Lumber Co. v. Progressive Contractors, Inc., N.D.1968, 160 N.W.2d 61.

5a. —— Reformation of

Where surety issued to prime contractor on behalf of electrical subcontractor two performance bonds and two payment bonds because of alleged mistake of law on part of surety only instead of only two performance bonds as allegedly intended by surety, and there was no evidence of fraud or inequitable conduct on part of prime contractor, surety was not entitled to reformation. National Union Fire Ins. Co. of Pittsburgh, Pa. v. D & L Const. Co., C.A.Mo.1965, 353 F.2d 169, certiorari denied 86 S.Ct. 1462, 384 U.S. 941, 16 L.Ed.2d 539.

8. Prime contractors and subcontractors

G. L. Christian and Associates v. U. S., 312 F.2d 418, main volume, 160 Ct.Cl. 1, rehearing denied 84 S.Ct. 1906, 377 U.S. 1010, 12 L.Ed.2d 1059.

Where there were contract breaches by the prime contractor which justified subcontractor in leaving job, failure of prime contractor to process subcontractor's claim against United States for work done on Capehart housing project at Air Force Base, though occurring subsequent to subcontractor's termination of its contracts with prime contractor, could be considered in connection with subcontractor's claim against prime contractor for damages which subcontractor might recover. Citizens Nat. Bank of Orlando v. Vitt, C.A.Tex.1966, 367 F.2d 541.

Subcontractor who supplied lumber to be used as trusses in houses to be constructed under this section should not be charged with costs incurred when contracting officer rejected use of material as trusses, where general contractor had obtained field approval for its use, had installed over two-thirds of trusses and could have sought approval by contracting officer prior to fashioning of truss. Continental Cas. Co. v. Allsop Lumber Co., C.A.Mo.1964, 336 F.2d 445, certiorari denied 85 S.Ct. 662, 379 U.S. 968, 13 L.Ed.2d 561.

That bond of plumbing subcontractor on a Capehart Act project, section 1594 et seq. of this title and section 1748b of Title 12, designated prime contractor's assignee as obligee did not prevent subro-

gation of prime contractor's surety to rights of prime contractor on subcontractor's bond, where subcontractor's bond incorporated by reference the subcontract between prime contractor's assignee and subcontractor, which subcontract expressly recognized the contractual arrangements between prime contractor and assignee. Continental Cas. Co. v. Hartford Acc. & Indem. Co., Cal. App.1966, 52 Cal.Rptr. 533.

9. Substantial performance

Autrey v. Williams & Dunlap, 210 F. Supp. 491, main volume, affirmed in part, reversed in part on other grounds 343 F. 2d 730.

Since the requisite ingredients for test of substantial performance, that is forfeiture and economic waste, were not present in contractor's action to recover sum caused by government's requirement that he change from two wire conductors to three wire conductors called for in specifications with respect to window air conditioning electrical outlets, the doctrine of substantial performance was not applicable. H. L. C. & Associates Const. Co. v. U. S., Ct.Cl.1966, 367 F.2d 586.

10. Termination of contracts

G. L. Christian and Associates v. U. S., 312 F.2d 418, main volume, 160 Ct.Cl. 1, rehearing denied 84 S.Ct. 1906, 377 U.S. 1010, 12 L.Ed.2d 1059.

Evidence was insufficient to establish that failure of prime contractor to process claim of subcontractor against United States for work done on Capehart housing project at Air Force Base was a breach of contract by prime contractor justifying termination by subcontractor of contracts with prime contractor. Citizens Nat. Bank of Orlando v. Vitt, C.A. Tex.1966, 367 F.2d 541.

11a. Filing of lien

For purposes of Capehart bond, as distinguished from purposes of perfecting local lien in Missouri, four month period provided by Missouri law for filing of lien was not converted to less than four months because of notice provision of Missouri statute that claimant other than original contractor shall give ten days' notice before filing of lien. Continental Cas. Co. v. Allsop Lumber Co., C.A.Mo. 1964, 336 F.2d 445, certiorari denied 85 S. Ct. 662, 379 U.S. 968, 13 L.Ed.2d 561.

12. Taxation

Where contractor agreed with federal agency to construct a post office building specifically suited to needs of the agency on land sold and conveyed by agency to contractor and to lease the land and building to such agency by long term lease, with renewal and purchase options at stated rentals and prices, and where no provision was made for payment by agency to contractor of costs or contract price of construction, the agency was not an "owner" of the post office building and contractor was not entitled to sales and use tax exemptions for building and construction materials incorporated therein. Smith Fireproofing Co. v. Donahue, 1968, 237 N.E.2d 300, 14 Ohio St.2d 168.

13. Valuation, determination

Specification of contract for construction of Capehart housing project that roofs in general shall be supported on roof trusses spaced generally two feet apart, and that contractors should provide any blocking required for attachment of roof sheathing or ceiling wallboard did not require contractors to install blocking to support plywood sheathing of roof, and contractors were entitled to recover from United States for installing blocking for plywood sheathing of roof under protest. Tufano Contracting Corp. v. U. S., 1966, 356 F.2d 535, 174 Ct.Cl. 398.

Assuming that measure of liability of prime contractor and its sureties for materials sold to subcontractor by materialman was reasonable value of the materials, price charged was evidence of reasonable value, absent a contrary showing. L & E Co. v. U. S. A. ex rel. Kaiser Gypsum Co., C.A.Cal.1965, 351 F.2d 880.

Damages were certain and interest properly allowed on claim for unpaid materials furnished subcontractor on military base housing project where dates of delivery and prices were admitted and payment was required within 90 days after invoice. Id.

14. Persons entitled to protection

Assignee of claim of construction company against second-tier subcontractor on Capehart project for unpaid construction equipment rental was entitled to recover from prime contractor's payment bond surety for unpaid claim. Bushman Const. Co. v. Conner, D.C.Colo.1966, 260 F.Supp. 779.

Limiting of protection of Capehart payment bond to those furnishing labor and materials to prime contractor or to first-tier subcontractor would defeat purpose of payment bond of furnishing protection to those furnishing labor and materials in construction of projects. Id.

15. Parties

Construction company which entered into subcontract with prime contractor on Capehart project for construction of all of project except carpentry and cement work and which, in turn, did no construction work but subcontracted all of work to other construction companies was not de facto prime contractor, but was a first-tier subcontractor. Bushman Const. Co. v. Conner, D.C.Colo.1966, 260 F.Supp. 779.

16. Assignments

Under payment bond providing for payment for all labor and material furnished claimants including those having direct contract with subcontractor of the principal, surety of prime contractor could be liable to assignee of company which rented equipment to second-tier subcontractor on Capehart housing project for unpaid equipment rental, even though prime contractors were not personally liable to assignee. Bushman Const. Co. v. Conner, D.C.Colo.1966, 260 F.Supp. 779.

17. Notice provisions

Kesk, Inc. v. National Union Indem. Co., 224 F.Supp. 766, main volume, affirmed 341 F.2d 301.

U. S. for Use and Benefit of Robertson Lumber Co. v. Cedric Sanders Co., 223 F. Supp. 435, main volume, affirmed 340 F. 2d 958.

Though mortgagor-builder was allegedly dominated by principal, notice to principal alone was not sufficient compliance with Capehart Act bond dual notice provisions of bonds under Capehart Act, section 1594 et seq. of this title and section 1748a et seq. of Title 12, requisite of notice to any two of following: (1) principal, (2) any one of obligees, and (3) surety. Continental Cas. Co. v. C. O. Brand, Inc., C.A.Tex.1966, 355 F.2d 969, certiorari denied 87 S.Ct. 53, 385 U.S. 825, 17 L.Ed.2d 62.

Dual notice requirement of payment bond, being more stringent than notice requirements of Miller Act, sections 270a-270d of Title 40, is valid and effective. Koppers Co. v. Continental Cas. Co., C.A. Mo.1964, 337 F.2d 499.

Notice provisions of Capehart bond prevail over less stringent notice provisions in Miller Act, sections 270a-270d of

Title 40 with respect to action on Capehart bond. Continental Cas. Co. v. Allsop Lumber Co., C.A.Mo.1964, 336 F.2d 445, certiorari denied 85 S.Ct. 662, 379 U.S. 968, 13 L.Ed.2d 561.

Under Capehart bonds providing that either giving of notice or filing of lien in accordance with local lien law was sufficient notice, requirement of bonds was satisfied where contractor and its surety had received prescribed notice within four months from date when last shipment of material was placed in hands of carrier by subcontractor which sued on bonds. Id.

Each shipment of lumber by subcontractor to general contractor of Capehart housing project was not a separate transaction and notice period for purposes of suit on bonds was not applicable to each separate shipment rather than to subcontract as a whole, where there was a written and continuing contract for all material which might be required for complete and prompt performance of the work, and date of last item delivered for project was date which was pertinent by Missouri law for lien purposes. Id.

Where it was clear that subcontractor failed to pay for all material furnished Capehart housing project by supplier, supplier's claim was for all its unpaid invoices and notice to recover on bond was given within 90 days from last delivery, fact that some of invoices were for deliveries before July 27 and some following November 28 did not preclude recovery on basis that suit was not timely because notice had not been given within 90 days from July 28 or that suit had been brought more than one year after that date. Russell v. Travelers Indem. Co., D.C.Mo.1965, 244 F.Supp. 419.

Notice provisions under this section, are more stringent than those required under Miller Act, sections 270a–270d of Title 40. Id.

Where notices of claim by supplier were received by at least two of required parties pursuant to Capehart bond before expiration of four-month period allowed by state law for effectuation of a lien, there was compliance with notice provisions in bond to effect that every claimant who had not been paid before expiration of 90 days after date on which last materials were furnished or before expiration of period provided by law at place where project was located for giving of first notice of lien, whichever period was longer, might sue on bond. Id.

Letter from supplier to subcontractor and prime contractor on Capehart housing project and letter from supplier to surety notifying recipients that certain sum was being claimed by supplier for labor and material furnished subcontractor on certain Capehart housing job were in substantial compliance with bond conditions merely providing that any one of obligees or surety be given written notice stating with substantial accuracy the amount claimed and name of party to whom materials were furnished or for whom work or labor was done or performed. Id.

Capehart project materialman's failure to given required timely notice, in that notice was given only to principal, did not bar action against Capehart bond sureties where sureties showed no prejudice in that they had in fact received full, timely and substantial advice of claim. Robertson Lumber Co. v. Progressive Contractors, Inc., N.D.1968, 160 N.W.2d 61.

17a. Process

Out-of-state service is effective in action on bond under this section. Koppers Co. v. Continental Cas. Co., C.A.Mo.1964, 337 F.2d 499.

18. Jurisdiction

Where changes provision of housing contract under this subchapter did not purport to deal with unilateral changes and did not contain mechanism for resolution of such a conflict, and its words did not confer power on any one person, contracting officer, contractor, or Federal Housing Commissioner, to make unilateral changes in contract's drawings or specifications, but rather contemplated consensual process in which contracting officer, contractor, and Commissioner participated, the changes clause did not cover administrative relief for unilateral disputed changes, and Court of Claims had jurisdiction thereof. Len Co. and Associates v. U. S., Ct.Cl.1967, 385 F.2d 438, 181 Ct.Cl. 29.

Federal district court had subject matter jurisdiction over unpaid materialman's assignee's claim against military base housing project prime contractor's sureties, under this section and sections 270a–270d of Title 40, and had ancillary jurisdiction of claim of assignee against subcontractor which contracted to purchase the wallboard and its sureties. L & E Co. v. U. S. A. ex rel. Kaiser Gypsum Co., C.A.Cal.1965, 351 F.2d 880.

Court of Claims did not lack jurisdiction of contractor's action to recover funds placed with Federal Housing Administration in escrow on government's demand, on theory that claim was against escrowee rather than United States, where choice of escrowee was not mandatory and valid judgment against government would bind escrowee. Gersten Const. Co. v. U. S., 346 F.2d 973, 171 Ct.Cl. 205.

Proper federal court has jurisdiction under section 1352 of Title 28 over action on bond under this section. Koppers Co. v. Continental Cas. Co., C.A.Mo.1964, 337 F.2d 499.

Payment bonds required by this section are "executed under any law of the United States" within section 1352 of Title 28 to effect that district court shall have original jurisdiction of any action on bond executed under any law of the United States; and suit by subcontractor against general contractor and its surety on bonds issued pursuant to Capehart Act was an action on such bonds; and federal court had jurisdiction thereof. Continental Cas. Co. v. Allsop Lumber Co., C.A.Mo.1964, 336 F.2d 445, certiorari denied 85 S.Ct. 662, 379 U.S. 968, 13 L.Ed. 2d 561.

State court had jurisdiction in materialman's action against Capehart bond sureties, with respect to housing project located in county in which state court had jurisdiction. Robertson Lumber Co. v. Progressive Contractors, Inc., N.D.1968, 160 N.W.2d 61.

19. Venue

Where primary contractor on Capehart contract defaulted and mortgagee elected not to complete, completion contract entered into solely between United States and primary completion contractor came within sections 270a–270d of Title 40 and suit by subcontractor against sureties on completion contract would, in interest of justice, and for reasons of convenience, be transferred to federal district wherein contract was to be performed. Griners' & Shaw, Inc. v. Federal Ins. Co., D.C. S.C.1964, 234 F.Supp. 753.

21. Limitations

Payment bond suit under this section brought by subcontractor's supplier was controlled by limitation set forth in Miller Act, sections 270a–270d of Title 40, of one year after day on which last labor was performed or material was supplied by

plaintiff rather than period bond specified of one year following date on which prime contractor ceased work. Missouri-Illinois Tractor & Equipment Co. v. D & L Const. Co. & Associates, C.A.Mo.1964, 337 F.2d 507.

Limitation period set forth in Miller Act, sections 270a–270d of Title 40, is applicable to action on Capehart Act payment bond despite presence of specified longer period in bond itself. Koppers Co. v. Continental Cas. Co., C.A.Mo.1964, 337 F.2d 499.

22. Burden of proof

Subcontractor who furnished material by rail for or to general contractor engaged in Capehart housing project was not required to prove actual incorporation of all lumber it furnished in order to maintain action on Capehart bonds. Continental Cas. Co. v. Allsop Lumber Co., C.A.Mo.1964, 336 F.2d 445, certiorari denied 85 S.Ct. 662, 379 U.S. 968, 13 L.Ed.2d 561.

Under Capehart bonds which by referring to suit under bonds for such sums as may be justly due claimant apparently emphasized amount contractually due, subcontractor suing on bonds for material sent by rail to general contractor did not have burden of showing the reasonable value of material furnished. Id.

When supplier suing on Capehart bond established without dispute that materials had been in fact furnished for specific Capehart project, burden of going forward with evidence shifted to defendants. Russell v. Travelers Indem. Co., D.C.Mo. 1965, 244 F.Supp. 419.

23. Evidence

Autrey v. Williams & Dunlap, 210 F. Supp. 491, main volume, affirmed in part, reversed in part on other grounds 343 F. 2d 730.

Evidence on claim against United States by contractor for additional wiring expenses because of alleged contract change with respect to construction of Capehart housing in particular area for navy showed that any mistake made by contractor in not excepting wiring claim from release executed by contractor prior to government's payment was unilateral and not mutual. H. L. C. & Associates Const. Co. v. U. S., Ct.Cl.1966, 367 F.2d 586.

Evidence sustained findings that prime contractor failed to cooperate with subcontractor and interfered with and hindered work of subcontractor, so that subcontractor was justified in terminating contracts with prime contractor, and so that subcontractor was entitled to recover on quantum meruit for work performed. Citizens Nat. Bank of Orlando v. Vitt, C.A.Tex.1966, 367 F.2d 541.

Evidence did not warrant finding that prime contractor, who agreed to assignment by subcontractor to bank of all moneys to become payable to subcontractor under subcontracts, was legally justified in refusing to perform its obligation represented by check, which prime contractor gave to subcontractor, and on which prime contractor stopped payment so as to put subcontractor out of business. Id.

Armed Services Board of Contract Appeals decision forfeiting contractor's bid deposit for contractor's failure to effect closing was supported by substantial evidence and was not shown to have been arbitrary or capricious. Heers v. U. S., Ct.Cl.1964, 357 F.2d 344.

Evidence sustained finding that surety was not discharged in whole or in part from its obligations under performance and payment bonds furnished to prime contractor on behalf of electrical subcontractor, on ground that prime contractor made payments which materially varied from payment provisions of subcontract. National Union Fire Ins. Co. of Pittsburgh, Pa. v. D & L Const. Co., C.A.Mo. 1965, 353 F.2d 169, certiorari denied 86 S. Ct. 1462, 384 U.S. 941, 16 L.Ed.2d 539.

Evidence sustained finding that general contractor and subcontractor had agreed that figure "eight" used in contract providing that shakes on houses constructed under Capehart Act were to be laid eight inches to weather was a clerical error as contended by subcontractor, which had delivered fewer shakes on ground that exposure should be 14 rather than eight inches and which sued on Capehart bonds. Continental Cas. Co. v. Allsop Lumber Co., C.A.Mo.1964, 336 F.2d 445, certiorari denied 85 S.Ct. 662, 379 U.S. 968, 13 L.Ed.2d 561.

Evidence established that material supplied by supplier suing on Capehart bond had been used on the Capehart project. Russell v. Travelers Indem. Co., D.C.Mo. 1965, 244 F.Supp. 419.

Subcontractors which were under economic pressure subsequent to prime contractor's default on Capehart housing contract and which sought to recover from prime contractor's surety value of work in progress at time of termination of contract failed to prove that defendant surety procured execution of releases and other settlement documents under duress. Tini Plumbing & Heating Co. v. Continental Cas Co., D.C.Minn.1965, 243 F. Supp. 229.

Evidence in cross-claim by prime contractor on project under this subchapter against subcontractor and its compensated surety disclosed that manner in which prime contractor had made periodic payments to subcontractor did not materially vary from terms and conditions of subcontracting agreement and that none of the payments materially affected nature of surety's risk under bonds. Triangle Elec. Supply Co. v. Mojave Elec. Co., D.C.Mo.1964, 234 F.Supp. 293, supplemented 238 F.Supp. 815.

Evidence in cross-claim by prime contractor on project under this subchapter against subcontractor which has not paid its material suppliers and its surety disclosed that none of the payments made by prime contractor to subcontractor for material inventoried on construction site had prejudiced surety and that the payments to subcontractor were made with the knowledge and consent of surety. Id.

23a. Findings

Evidence sustained finding of federal district court that plaintiff knew that subcontractor, with which plaintiff had contracted to do work on Capehart Act housing units, was only a subcontractor for that part of project in which plaintiff was interested, and that plaintiff failed in his quest for contractual relationship with defendant general contractor and was required to look to subcontractor for compensation allegedly due plaintiff for work, and that therefore plaintiff could not prevail under breach of contract second count and quantum meruit third count in action against general contractor and surety. Bradley v. Maryland Cas. Co., C.A.Mo.1967, 382 F.2d 415.

Findings by contracting officer and by Armed Services Board of Contract Appeals that contractor was unable or unwilling to effect a closing in accordance with terms of contract documents were findings of fact; consequently, board's decision declaring forfeiture of bid deposit, as allowable under letter of acceptability, was final unless fraudulent capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith

or not supported by substantial evidence. Heers v. U. S., Ct.Cl.1964, 357 F.2d 344.

24. Interest

It was inherent in scheme of Capehart Act, section 1594 et seq. of this title and section 1748 et seq. of Title 12, that contractor would obtain private financing and pay interest, and interest costs were placed in very same category as more tangible costs of construction, and government was obligated to pay contractor additional costs required by mutual agreement to extend contract period since it knew that interest during construction was an approved and required part of contract cost. Phillips Const. Co. v. U. S., 1967, 374 F.2d 538, 179 Ct.Cl. 54.

Prejudgment interest which prime contractor was entitled to recover from surety on defaulting subcontractor's surety on performance and payment bonds was improperly computed, where it was computed from date of prime contractor's letter to surety notifying surety of subcontractor's default and demanding performance by surety, and no specific amount was demanded by prime contractor, and there was no basis for computing damages on that date. National Union Fire Ins. Co. of Pittsburgh, Pa. v. D & L Const. Co., C.A.Mo.1965, 353 F.2d 169, certiorari denied 86 S.Ct. 1462, 384 U.S. 941, 16 L.Ed.2d 539.

Where surety furnished prime contractor payment and performance bonds on behalf of electrical subcontractor, and subcontractor defaulted, and prime contractor was required to complete work under subcontract, and prime contractor brought action against surety on bonds, prime contractor was entitled to recover prejudgment interest and could recover such interest beyond bond coverage limits. Id.

Prejudgment interest from date of demand would be allowed prime contractor on his cross claim against subcontractor and surety on payment and performance bonds in Capehart bond case, where interest would be item of damage for surety's delay in payment, and bonds were not "penal bonds". Triangle Elec. Supply Co. v. Mojave Elec. Co., D.C.Mo.1965, 238 F.Supp. 815.

Fact that allowance of prejudgment interest on cross claim by prime contractor against subcontractor and surety in a Capehart bond case would exceed amount of bond would not require its disallowance. Id.

25. Reimbursement by sureties

Kesk, Inc. v. National Union Indem. Co., 224 F.Supp. 766, main volume, affirmed 341 F.2d 301.

Federal district court properly denied recovery on first count of amended complaint seeking to recover on common-law contract cause of action, where first count alleged only a statutory cause of action against contractor and surety on three Capehart payment bonds furnished under this section. Bradley v. Maryland Cas. Co., C.A.Mo.1967, 382 F.2d 415.

Where prime contractor subcontracted electric work for $530,000, and surety furnished payment and performance bonds to prime contractor on behalf of subcontractor, and subcontractor, after receiving $143,621, defaulted on subcontract, and prime contractor was required to complete work, prime contractor was entitled to recover from surety amount which would put prime contractor in position it would have occupied if subcontractor had faithfully fulfilled subcontract and not $386,379 which had not been paid to subcontractor. National Union Fire Ins. Co. of Pittsburgh, Pa. v. D & L Const. Co., C.A.Mo.1965, 353 F.2d 169, certiorari denied 86 S.Ct. 1462, 384 U.S. 941, 16 L.Ed.2d 539.

Where surety furnished prime contractor with performance and payment bonds on behalf of electrical subcontractor, and subcontractor defaulted, and prime contractor obtained new subcontracts but was unable in emergency to find responsible new subcontractors who could give performance and payment bonds, and new subcontractors in turn defaulted, completion costs recoverable by prime contractor from surety were not required to be limited to amounts by which subcontracted work relet to new subcontractors exceeded amount called for by original subcontractor's subcontract. Id.

Prime contractor on project under this subchapter which had made, with consent and knowledge of compensated surety issuing payment and performance bonds on behalf of subcontractor, payments to subcontractor for material inventoried on site and not actually incorporated in work as per subcontract provision was, upon subcontractor's failure to pay for materials, entitled to assert all its rights against surety under payment bonds to secure payments to persons furnishing materials to subcontractor. Triangle Elec. Supply Co. v. Mojave Elec. Co., D.C.Mo.1964, 234 F.Supp. 293, supplemented 238 F.Supp. 815.

The surety of a subcontractor was liable on its bond to the general contractor's surety for unpaid bills for construction materials used in a project built pursuant to the federal Capehart Act section 1594 et seq. of this Title and section 1748b of Title 12, where subcontractor failed to pay for such materials. Continental Cas. Co. v. Hartford Acc. & Indem. Co., Cal.App.1966, 52 Cal.Rptr. 533.

Sureties under this subchapter were answerable to subcontractor for augmented costs of labor and materials above contract price attributed to any default or hindrance by assured. B. C. Richter Contracting Co. v. Continental Cas. Co., 1964, 41 Cal.Rptr. 98, 230 C.A.2d 491.

25a. Defenses of sureties

Compensated surety on subcontractor's payment and performance bond on project under this subchapter could not claim exoneration on its obligation on theory that others failed to establish payment procedures that surety failed to establish for its own protection. Triangle Elec. Supply Co. v. Mojave Elec. Co., D.C.Mo. 1964, 234 F.Supp. 293, supplemented 238 F.Supp. 815

Where compensated surety for defaulting subcontractor on project under this subchapter failed to undertake completion of subcontractor and elected to rely upon claimed defenses, amounts specified in take-over contracts entered into between prime contractor and others had no relevancy whatever in calculation of amount of damages to be assessed on bonds which obligated surety to pay for materials supplied to subcontractor. Id.

26. Review

To extent that complete relief is available under specific provision of housing contract between contractor and United States under this subchapter, that is claim is both cognizable under and adjustable by terms of contract, controversy arises under contract and is subject to initial administrative resolution as provided in normal disputes article of contract, but if fair reading of particular contract shows that specific dispute has not been committed to agency decision, claims are then for pure breach of contract and are considered de novo by Court of Claims. Len Co. and Associates v. U. S., 1967, 385 F.2d 438, 181 Ct.Cl. 29.

Reinspection claims of contractor were not redressable under inspection article of housing contract, under this subchapter, where that article did not authorize

granting of specific relief if, in fact, additional work proved not to be required, and claims, though arising as result of operation of that article, were not made adjustable under or by it, disputes as to reinspection claims were not required to be presented to administrative tribunal but were breach of contract claims to be heard de novo in Court of Claims. Id.

Even if conduct of government's officer was unreasonable with respect to interpretations of contract specifications, it was necessary to exhaust appeal provisions of contract before seeking judicial relief. H. L. C. & Associates Const. Co. v. U. S., Ct.Cl.1966, 367 F.2d 586.

Validity of judgment for prime contractor and surety sued by subcontractor's supplier for materials furnished for five projects, which together composed one construction contract and each of which was covered by separate bond requiring notice of default to be given within 90 days, could not be determined by reviewing court, in absence of trial court's specifically finding whether subcontractor, which had become indebted to supplier on earlier projects, had directed subcontractor's payments to cover material furnished for last project completed within 90 days of notice of default being given by supplier which had applied payments to the prior indebtedness. S. S. Silberblatt, Inc. v. U. S. for Use and Benefit of Lambert Corp., C.A.Tex.1965, 353 F.2d 545.

Decision of federal Court of Appeals in action between same parties, ordering dismissal of materialman's action against Capehart bond surety on ground that materialman could not recover under Miller Act, section 270a-270d of Title 40, insofar as notice requirements were concerned, was not res judicata as to state court action in which issue was whether materialman had complied with notice requirements of bond or whether compliance with notice provisions was condition precedent to suit on bond. Robertson Lumber Co. v. Progressive Contractors, Inc., N.D.1968, 160 N.W.2d 61.

27. Payments

All parties to project under this subchapter were bound to know procedures for payments as detailed in prime contract and must be held to have known that prime contractor would be placed in funds to pay for uninstalled acceptable materials suitably stored on mortgaged property and cost of portions of work acceptably completed less 10% and prior advances. Triangle Elec. Supply Co. v. Mojave Elec. Co., D.C.Mo.1964, 234 F.Supp 293, supplemented 238 F.Supp. 815.

All parties, including surety on subcontractor's bond under this subchapter must be held to have understood that subcontractor would be paid for material inventory as well as physical progress in accordance with established payment procedures and that specific obligation being bonded by surety was subcontractor's duty to pay for those materials, either with money it received on its draw from prime contractor or with funds of its own. Id.

Neither prime contractor on project under this subchapter nor subcontractor nor anyone else was under a duty to protect subcontractor's compensated surety from either the negligence or incompetency of its own agents in failing to take effective steps to see that payments by prime contractor to subcontractor for materials stored on job site would in fact reach material suppliers. Id.

28. Attorney's fees

Where surety furnished payment and performance bonds to prime contractor on behalf of electrical subcontractor, and subcontractor defaulted, and prime contractor was required to complete work under subcontract, and prime contractor brought action against surety on bonds, prime contractor was entitled to recover attorneys' fees, in view of provision of contract expressly providing for allowance of attorneys' fees in such situation. National Union Fire Ins. Co. of Pittsburgh, Pa. v. D & L Const. Co., C.A.Mo. 1965, 353 F.2d 169, certiorari denied 86 S. Ct. 1462. 384 U.S. 941, 16 L.Ed.2d 539.

Attorneys' fees were recoverable by prime contractor from surety on defaulted subcontractor's payment and performance bonds in Capehart bond case, where contract provided that, in event prime contractor engaged attorneys' services, subcontractor agreed to pay reasonable attorneys' fees to prime contractor. Triangle Elec. Supply Co. v. Mojave Elec. Co., D.C.Mo.1965, 238 F.Supp. 815.

California Government Code provisions did not make contractor on federal project liable for attorney fees in suit by subcontractors and did not form predicate for award of attorney fees to subcontractors in suit on bonds under this subchapter. B. C. Richter Contracting Co. v. Continental Cas. Co., 1964, 41 Cal.Rptr. 98, 230 C.A.2d 491.

29. Service of process

Corporations which defendants had formed, pursuant to government direction in connection with Capehart Act project and stock of which had been transferred to Secretary of Army upon completion of project, were government instrumentalities and not alter egos or agents of defendants or other private parties, and service on these corporations was not service on defendants. Great Am. Ins. Co. v. Louis Lesser Enterprises, Inc., C.A.Mo.1965, 353 F.2d 997.

Service in accordance with what would have been valid service had action been brought on Miller Act, sections 270a–270d of Title 40, is valid service in action on Capehart bond. Continental Cas. Co. v. Allsop Lumber Co., C.A.Mo.1964, 336 F.2d 445, certiorari denied 85 S.Ct. 662, 379 U. S. 968, 13 L.Ed.2d 561.

30. Contracts

Court of Claims cannot rewrite, by undiscriminating use of constructive-change doctrine, the parties' own housing contract under this subchapter. Len Co. and Associates v. U. S., 1967, 385 F.2d 438, 181 Ct.Cl. 29.

Where subcontractor assigns to bank moneys payable under subcontract and directs that checks be made payable to a subcontractor and the bank and prime contractor accepts assignment, there is a contract for benefit of bank, and bank can enforce contract as a donee beneficiary and can recover from prime contractor on breach of contract by prime contractor. Citizens Nat. Bank of Orlando v. Vitt, C.A.Tex.1966, 367 F.2d 541.

Where none of persons who took part in preparation of bid of contractors for Capehart housing project gave any consideration to possibility that ceiling blocking was required by ambiguous specification, and those persons acted reasonably contractors could not be charged with violation of any duty to seek clarification before bidding, and contractors could recover from United States for ceiling blocking installed under protest. Tufano Contracting Corp. v. U. S., 1966, 356 F.2d 535, 174 Ct.Cl. 398.

Specification of contract between contractors and Department of the Air Force for construction of Capehart housing project that, with respect to ceilings, all ends and edges of wallboard shall be placed only over structural members or, where

ne exist, rigid blocking shall be installed as ambiguous and would be construed gainst Government, which was responsible for furnishing specification, and contractors were entitled to recover from nited States for ceiling blocking installed by contractors under protest. Id.

Construction of provision of contract between supplier of material and general ontractor on Capehart housing project, o effect that prices quoted should include ack priming as specified in certain exibit to require subcontractor to back rime siding material was not improper. ontinental Cas. Co. v. Allsop Lumber o., C.A.Mo.1964, 336 F.2d 445, certiorari enied 85 S.Ct. 662, 379 U.S. 968, 13 L.Ed. d 561.

Service in accordance with what would ave been valid service had action been rought on Miller Act sections 270a–270d f Title 40, is valid service in action on apehart bond. Id.

In accord with principle that an unsual or unexpected expense will not exuse a party from performing a contract, where interest rates increased beween the time plaintiff's bid was accepted and financing was secured by a apehart Housing contractor, the contractor would not be excused from perormance since the possibility that the ender would charge a higher premium as a risk which the plaintiff had to ear. Terminal Const. Corp. v. U. S., 965, 171 Ct.Cl. 1.

Where a closing under a Capehart lousing contract is delayed for several eeks because the Secretary of Labor oes not promptly issue corrections required in a Davis-Bacon wage determinaion but where the delay, although prejuicial to the contractor, was not entirey the fault of the Government but was artly the fault of the contractor, the ontractor was not justified in deeming imself excused from performance alhough he might have had grounds for ecovering damages in a breach of contract suit. Id.

Where contract regulations designed to enefit the Government are violated by he contracting officer and his action is ot repudiated by the Government but is ather ratified by it, the plaintiff-contractor cannot gain an advantage from uch regulation. Centex Construction Co. . U. S., 1963, 162 Ct.Cl. 211.

The issuance of a Letter of Acceptabilty in a Capehart Housing project contract results in a contractual relationhip between the parties and as a result f such issuance the successful bidder inurs certain obligations, including the btaining of financing at the specified ate of interest so that FHA closing will be effected within a prescribed time, and if the closing is effected on time, the successful bidder may have back his bid deposit, otherwise it will be forfeited. Miller v. U. S., 1963, 161 Ct.Cl. 455.

A Letter of Acceptability issued to a successful bidder on a Capehart Housing project contract, which the parties agree may be canceled if the Government is unable to obtain an acceptable off-site bid for access roads, is valid and binding according to its terms and once the off-site contract is secured, the Government need not issue a new Letter of Acceptability. Id.

31. Release

The executed release by contractor, which by alleged unilateral mistake failed to except therefrom wiring claim against government because of alleged contract changes with respect to construction of Capehart housing in particular area for navy, precluded recovery on claim for extra wiring expense. H. L. C. & Associates Const. Co. v. U. S., Ct. Cl.1966, 367 F.2d 586.

Where government contracting agency in its discretion required release by contractor in constructing Capehart housing on naval base as a condition for making final payment at time parties were engaged in performing contract and agency accepted the contractor's tendered release which not only failed to meet contract requirement as to release's content but was so broad as to make release virtually meaningless, release was ineffective to preclude contractor from subsequently prosecuting a claim for extra wiring expense on contract because of alleged changes therein. Id.

32. Administrative activity, disputes subject to

If dispute flowing from conduct of contracting officer is cognizable under and adjustable by "changes" provision of housing contract under this subchapter, dispute arises under contract and becomes subject to contract's administrative procedure but if conflict is not redressable under the clause officer's erroneous interpretation is a breach of contract which is triable in Court of Claims. Len Co. and Associates v. U. S., 1967, 385 F.2d 438, 181 Ct.Cl. 29.

Contractor's claims involving disputes as to correct equitable adjustment on account of two separate formal changes in contractual requirements were redressable under changes and changed conditions clause of housing contract under this subchapter, and were subject to initial administrative determination by Federal Housing Administration and were not triable de novo in Court of Claims. Id.

§ 1594a. Acquisition of military housing financed under Armed Services Housing Mortgage Insurance Fund and rental housing at military bases—Purchase price

(a) Whenever the Secretary of Defense or his designee deems it necesary for the purpose of this subchapter, he may acquire, by purchase, donation, condemnation, or other means of transfer, any land or (with the pproval of the Secretary of Housing and Urban Development) (1) any ousing financed with mortgages insured under title VIII of the National Housing Act as in effect prior to the enactment of the Housing Amendments of 1955, or (2) any housing situated adjacent to a military installation which was (A) completed prior to July 1, 1952, (B) certified by the Department of Defense, prior to construction, as being necessary to meet n existing military family housing need and considered as military housng by the Secretary of Housing and Urban Development, and (C) financed with mortgages insured under section 1713 of Title 12, or (3) any

housing situated on or adjacent to a military installation which was (A) completed prior to July 1, 1952, (B) considered by the Department of Defense, prior to construction, as being necessary to meet an existing military family housing need and considered as military housing by the Secretary of Housing and Urban Development, and (C) financed with mortgages insured under section 1743 of Title 12, including adjacent property constructed primarily to provide commercial facilities for the occupants of such housing. The purchase price of any such housing shall not exceed the Secretary of Housing and Urban Development's estimate of the replacement cost of such housing and related property (not including the value of any improvements installed or constructed with appropriated funds) as of the date of final endorsement for mortgage insurance reduced by an appropriate allowance representing the estimated cost of repairs and replacements necessary to restore the property to sound physical condition, as determined by the Secretary of Defense or his designee upon the advice of the Secretary of Housing and Urban Development: *Provided*, That in any case where the Secretary of Defense or his designee acquires a project held by the Secretary of Housing and Urban Development, the price paid shall not exceed the face value of the debentures (plus accrued interest thereon) which the Secretary of Housing and Urban Development issued in acquiring such project.

* * * * * * * * * *

Condemnation; procedures; deposits; payment; interest

(c) (1) Condemnation proceedings instituted pursuant to this section shall be conducted in accordance with the provisions of section 257 of Title 40, or any other applicable Federal statute. Before any such condemnation proceedings are instituted, an effort shall be made to acquire the property involved by negotiation. In any such condemnation proceedings, and in the interests of expedition, the issue of just compensation may be determined by a commission of three qualified, disinterested persons to be appointed by the court. Any commission appointed hereunder shall give full consideration to all elements of value in accordance with existing law, and shall have the powers of a master provided in subdivision (c) of rule 53 of the Federal Rules of Civil Procedure and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of such rule. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice prescribed in paragraph (2) of subdivision (e) of such rule. Trial of all issues, other than just compensation, shall be by the court.

(2) In any condemnation proceedings instituted to acquire any such housing, or interest therein, the court shall not order the party in possession to surrender possession in advance of final judgment unless a declaration of taking has been filed, and a deposit of the amount estimated to be just compensation has been made, under section 258a of Title 40. The amount of such deposit for the purpose of this section shall not in any case be less than an amount equal to the actual cost of the housing (not including the value of any improvements installed or constructed with appropriated funds) as certified by the sponsor or owner of the project to the Federal Housing Commissioner pursuant to any statute or any regulation issued by the Federal Housing Commissioner, reduced by the amount of the principal obligation of the mortgage outstanding at the time possession is surrendered, but any such deposit shall not include any excess mortgage proceeds or "windfalls," kickbacks and rebates received in connection with the construction of said housing as determined by the Department of Defense, or any other Federal agency. The amount of such deposit in any case where the sponsor or owner has not certified the cost of the project to the Federal Housing Commissioner at the time of the enactment of the Military Construction Act of 1959, shall be determined by the Secretary of Defense, or his designee, in accordance with sections

258a–258e of Title 40, with a view toward accurately estimating the equity of the sponsor or owner: *Provided*, That in the event there is withdrawn from the registry of the court by the owner or sponsor a sum of money in excess of the final award of just compensation, this excess shall be repaid to the United States plus a sum equal to 4 per centum per annum on such excess from the time such sum is deposited in the registry of the court: *Provided further*, That any court in which money is deposited as provided in this section shall require the furnishing of security by the owner to protect the United States from any loss by reason of a final award of just compensation of less than the amount deposited: *And provided further*, That the deposit required to be made by this section shall be without prejudice to any party in the determination of just compensation. Unless title is in dispute, the court, upon application and subject to the foregoing provisions of this subsection, shall promptly pay to the owner at least 75 per centum of the amount so deposited, but such payment shall be made without prejudice to any party to the proceeding. In the event that condemnation proceedings are instituted in accordance with procedures under sections 258a–258e of Title 40, the court shall order that the amount deposited shall be paid in a lump sum or over a period not exceeding five years in accordance with stipulations executed by the parties in the proceedings. In connection with condemnation proceedings which do not utilize the procedures under such sections, the Secretary of Defense or his designee, after final judgment of the court, may pay or agree to pay in a lump sum or, in accordance with stipulations executed by the parties to the proceedings, over a period not exceeding five years the difference between the outstanding principal obligation, plus accrued interest, and the price for the property fixed by the court. Unless such payment is made in a lump sum, the unpaid balance thereof shall bear interest at the rate of 4 per centum per annum.

* * * * * * * * * *

Release of accrual requirements for replacement, taxes, and hazard insurance reserves

(e) The Secretary of Defense or his designee may, in the case of any housing acquired or to be acquired under this section, make arrangements with the mortgagee whereby such mortgagee will agree to release and waive all requirements of accruals for reserves for replacement, taxes, and hazard insurance provided for under the corporate charter and indenture agreement with respect to such housing, upon the execution of a written agreement by the Secretary or his designee that the purposes for which such reserves and other funds were accrued will be carried out.

As amended May 25, 1967, Pub.L. 90–19, § 12(e), (h) (4)–(6), 81 Stat. 23, 24.

* * * * * * * * * *

1967 Amendment. Subsec. (a). Pub.L. 90–19, § 12(e) (1)–(3), (h) (4), substituted "Secretary of Housing and Urban Development" for "Federal Housing Commissioner" wherever appearing in the first sentence, "Secretary of Housing and Urban Development's" for "Federal Housing Commissioner's", "Secretary of Housing and Urban Development" for "Commissioner" wherever appearing in the second sentence, and "Secretary of Defense" for "Secretary" in the proviso, respectively

Subsec. (c) (2). Pub.L. 90–19, § 12(e) (1), (h) (5), substituted "Secretary of Housing and Urban Development" for "Federal Housing Commissioner" wherever appearing and "Secretary of Defense" for "Secretary" in the penultimate sentence, respectively.

Subsec. (e). Pub.L. 90–19, § 12(h) (6), substituted "Secretary of Defense" for "Secretary".

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

Supplementary Index to Notes

3. —— Capitalization of income

Even if request for instruction was sufficient to challenge instructions on choice of capitalization theories in eminent domain proceeding, the challenge was too late in view of apparent pretrial agreement on theories of income capitalization and the introduction, without objection, of testimony in support of those theories. Sill Corp. v. U. S., C.A. Okl.1965, 343 F.2d 411, certiorari denied 86 S.Ct. 88, 382 U.S. 840, 15 L.Ed.2d 81.

Neither theory of income capitalization after deduction of debt service nor theory of income capitalization before deduction of debt service was so palpably erroneous as to be legally inadmissible in action by government to acquire interest of owner-sponsor of Wherry housing project. Id.

In determining fair market value of owner-sponsor's interest in Wherry housing project being taken by government, jury could consider testimony that property required repair and that expert deducted this amount for capitalization of income on assumption that the accrued replacement fund would not be available for this purpose. Id.

Whether capitalization of leasehold interest in military housing project being taken by government took place after debt service or before debt service was not critical, and it was the choice of rate and time factors that was important in determining proper valuation. U. S. v. Certain Interests in Property Situate in Adams County, State of Colo., D.C. Colo.1965, 239 F.Supp. 822.

4. —— Market value

Law is not wedded to any particular formula or method for determining fair market value as measure of just compensation for property taken. Sill Corp. v. U. S., C.A.Okl.1965, 343 F.2d 411, certiorari denied 86 S.Ct. 88, 382 U.S. 840, 15 L.Ed.2d 81.

Determination of fair market value as measure of just compensation for property taken may be based on comparable sales, reproduction costs, capitalization of net income, or an intersection of these determinants. Id.

6a. Escrow fund

Government contractor could under no circumstances obtain double recovery of amount placed in escrow on government's demand, first from general treasury funds and then from escrowed funds, as judgment for contractor which would establish its rights to amount in question could be raised by government to bar any attempt to achieve double recovery. Gersten Const. Co. v. U. S., 346 F.2d 973, 171 Ct.Cl. 205.

Where timely determination was made by FHA in accepting negotiated wage adjustment and determination was used as basis for various instruments pertaining to Capehart housing project, subsequent attempt of FHA after initial closing to revise determination was of no effect, and government's requiring contractor to place disputed amount in escrow was improper. Id.

9. Condemnation proceedings

Sales of corporate stock in Wherry Act military housing projects were of little value for comparison purposes in condemnation suit by United States to take leasehold interest in military housing project erected pursuant to provisions of Wherry Act, section 1748 et seq. of Title 12. U. S. v. Certain Interests in Property Situate in Adams County, State of Colo., D.C.Colo.1965, 239 F.Supp. 822.

11. Evidence—Admissibility

Court properly excluded evidence of reproduction costs in government action to acquire owner-sponsor's interest in Wherry housing project subject to rent control by Federal Housing Administration whose policy had been to allow return based on original cost. Sill Corp. v. U. S., C.A.Okl.1965, 343 F.2d 411, certiorari denied 86 S.Ct. 88, 382 U.S. 840, 15 L.Ed.2d 81.

12. —— Weight and sufficiency

Evidence established $487,504 as just compensation for taking of leasehold interest, having unexpired term of 62 years, in military housing project erected pursuant to provisions of Wherry Act, section 1748 et seq. of Title 12 after applying a selected capitalization rate of 5.75% over the remaining economic life of 42 years and multiplying this figure by average income of $112,982 from which the remaining mortgage balance was subtracted. U. S. v. Certain Interests in Property Situate in Adams County, State of Colo., D.C.Tex.1965, 239 F.Supp. 822.

16. Instructions

Instruction to the effect that comparable sales of Wherry housing projects, to the extent they were comparable, were relevant in determining capitalization rate to be applied in determining fair market value of interest of owner-sponsor being taken was proper. Sill Corp. v. U. S., C.A.Okl.1965, 343 F.2d 411, certiorari denied 86 S.Ct. 88, 382 U.S. 840, 15 L.Ed.2d 81.

Under testimony to the effect that needed repairs to Wherry housing project, the owner-sponsor's interest in which was being taken by government, would not be paid by accrued replacement fund which had been refunded to owner-sponsor, instruction allowing jury to deduct cost of repairs was proper. Id.

16a. Conduct of counsel

It is responsibility of trial judge to see to it that counsel remain within bounds of record on oral argument. Sill Corp. v. U. S., C.A.Okl.1965, 343 F.2d 411, certiorari denied 86 S.Ct. 88, 382 U.S. 840, 15 L.Ed.2d 81.

It ought not be incumbent upon counsel to interrupt argument which is not within the bounds of record, and court ought to take the initiative where counsel is plainly inflammatory. Id.

While government counsel may prosecute with earnestness and vigor, it is as much his duty to refrain from improper methods calculated to produce wrongful conviction as it is to use every legitimate means to bring about a just one. Id.

18. Review

Court of Appeals would not disturb jury verdict in government action for taking interest of owner-sponsor of Wherry housing project unless convinced that it rested upon palpably erroneous rule of capitalization used to measure fair maket value for purpose of just compensation. Sill Corp. v. U. S., C.A.Okl.1965, 343 F.2d 411, certiorari denied 86 S.Ct. 88, 382 U.S. 840, 15 L.Ed.2d 81.

§ 1594a–1. Department of Defense family housing management account

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Single account administration; transfer and uses of funds

(b) The management account shall be administered by the Secretary of Defense as a single account. Into such account there shall be transferred (1) the unexpended balance of the funds established pursuant to subsections (g) and (h) of section 404 of the Housing Amendments of 1955, and (2) appropriations hereafter made to the Department of De

ense, for the purpose of, or which are available for, the payment of costs rising in connection with the construction, acquisition, replacement, addition, expansion, extension, alteration, leasing, operation, or maintenance f family housing, including the cost of principal and interest charges, nd insurance premiums, arising in connection with the acquisition of uch housing, and mortgage insurance premiums payable under section 715m(c) of Title 12 and (3) notwithstanding any other provision of aw, for the purpose of debt service, proceeds of the disposal of family ousing of the Department of Defense, including related land and improvements, whether disposed of by the Department of Defense or any ther Federal agency, but less those expenses payable pursuant to section 85(b) of Title 40, to remain available until expended.

As amended Pub.L. 90–110, Title VI, § 606, Oct. 21, 1967, 81 Stat. 304.

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1967 Amendment. Subsec. (b). Pub.L. 0–110 added clause (3).

§ 1594c. Services of architects and engineers; use of appropriations; cquisition of sites

Whenever the Secretary of Defense or his designee determines that it is esirable in order to effectuate the purposes of this subchapter, the Secretary is authorized, without regard to the civil service and classification aws, to procure, by negotiation or otherwise, the services of architects nd engineers, or organizations thereof, under such arrangements as he eems desirable, but at an expense not in excess of that permissible under he schedule of fees allowed from time to time by the Secretary of Housig and Urban Development in connection with projects assisted under he United States Housing Act of 1937, as amended. Such services may nclude the development of plans, drawings, and specifications for family ousing under this subchapter and other services in connection therewith: *rovided*, That such plans, drawings, and specifications may include the se on any project to be constructed under this subchapter of alternate aterials or alternate types of construction, including prefabrication, that rovide substantially equal value and conform to standards established by he Secretary of Housing and Urban Development: *Provided further*, That uch plans, drawings, and specifications, when developed pursuant to arangements made under this section after August 7, 1956, shall follow the rinciple of modular measure, in order that the housing may be built by onventional construction, on-site fabrication, factory precutting, factory abrication, or any combination of these construction methods: *Provided urther*, That the Secretary of Defense may designate certain sites or parts hereof for family housing to be furnished from prefabricated houses or ousing components. Such arrangements may include provision for adance or progress payments, for payment by third parties, for payment by he Government of any such compensation as is not paid for by third arties, and shall include provision for reimbursement by third parties to he Government of any compensation or other expenses paid by the Govrnment pursuant to this section, and may include other provisions for ompensation. Any public works appropriations now or hereafter available to the Departments of the Army, Navy, or Air Force or the Coast Guard ay be obligated by the respective departments or the Coast Guard for ese purposes. Reimbursements to the Government on account of payents made pursuant to this section shall be made to appropriations gainst which such payments were charged. The Secretary of Defense is rther authorized to advance or pay to the Department of Housing and rban Development its "Appraisal and Eligibility Statement" fees in conection with such family housing. The Secretary of Defense is further uthorized to enter into arrangements by contract or otherwise for evental acquisition by the Government, without cost to the Government of all ght, title, and interest in sites on which housing is constructed pursuant this subchapter and improvements thereon.

As amended May 25, 1967, Pub.L. 90–19, § 12(f), (h) (7), (8), 81 Stat. 24.

1967 Amendment. Pub.L. 90–19, substituted "Secretary of Housing and Urban Development" and "Department of Housing and Urban Development" for "Public Housing Administration" and "Federal Housing Administration" in the first sentence and the first proviso and for "Federal Housing Administration" in the penultimate sentence and "Secretary of Defense" for "Secretary" in the third proviso and last two sentences, respectively.

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

§ 1594e. Definitions

(a) Wherever the terms "Secretary of Defense" or "Secretary of the Army, Navy, or Air Force" appear in this subchapter or in title VIII of the National Housing Act, as amended, by the Housing Amendments of 1955, they shall be deemed to mean the Secretary of the Treasury in the case of the application of the provisions of this subchapter or of title VIII of the National Housing Act, as amended by the Housing Amendments of 1955, for the benefit of the United States Coast Guard.

As amended May 25, 1967, Pub.L. 90–19, § 12(g), 81 Stat. 24.

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1967 Amendment. Subsec. (a). Pub.L. 90–19 struck out "or Secretary" following "Secretary of Defense".

Legislative History: For legislative history and purpose of Pub.L. 90–19, see 1967 U.S.Code Cong. and Adm.News, p. 1194.

§ 1594h—1. Improvement of family housing units; public quarters designation; cost limitations

Construction Cost Limitations. Section 502 of Pub.L. 89–188, Title V, Sept. 16, 1965, 79 Stat. 813, provided that:

"Authorizations for the construction of family housing provided in this Act shall be subject to the following limitations on cost, which shall include shades, screens, ranges, refrigerators, and all other installed equipment and fixtures:

"(a) The cost per unit of family housing constructed in the United States (other than Hawaii and Alaska) and Puerto Rico shall not exceed—

"$24,000 for general officers or equivalent;

"$19,800 for colonels or equivalent;

"$17,600 for majors and/or lieutenant colonels or equivalent;

"$15,400 for all other commissioned or warrant officer personnel or equivalent, except that four-bedroom housing units authorized by sections 4774(g), 7574(e), and 9774(g) of title 10, United States Code, may be constructed at a cost not to exceed $17,000;

"$13,200 for enlisted personnel, except that four-bedroom housing units authorized by sections 4774(f), 7574(d), and 9774(f) of title 10, United States Code, may be constructed at a cost not to exceed $15,000.

"(b) When family housing units are constructed in areas other than those listed in subsection (a), the average cost of all such units, in any project of fifty units or more, shall not exceed $32,000, and in no event shall the cost of any unit exceed $40,000.

"(c) The cost limitations provided in subsections (a) and (b) shall be applied to the five-foot line.

"(d) For all units constructed in the areas listed in subsection (a), exclusive of the project for the United States Military Academy at West Point, the average unit cost for each military department shall not exceed $17,500, including the cost of the family unit and the proportionate costs of land acquisition, site preparation, and installation of utilities.

"(e) No family housing unit in the areas listed in subsection (a) shall be constructed at a total cost exceeding $28,000, including the cost of the family unit and the proportionate costs of land acquisition, site preparation, and installation of utilities.

"(f) Units constructed at the United States Military Academy, West Point, shall not be subject to the limitations of subsections (a) through (e) of this section, but the average cost of such units shall not exceed $36,000, including the cost of the family unit and the proportionate costs of land acquisition, site preparation, and installation of utilities."

§ 1594j. Inadequate quarters—Occupancy on rental basis without loss of basic allowance for quarters

(a) Notwithstanding the provisions of any other law, members of the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, with dependents, may occupy on a rental basis, without loss of basic allowance for quarters, inadequate quarters under the jurisdiction of any of the uniformed services, notwithstanding that such quarters may have been constructed or converted for assignment as public quarters. The net difference between the basic allowance for quarters and the fair rental value of such quarters shall be paid from otherwise available appropriations: *Provided*, That notwithstanding the fair rental value of such quarters, or of any other housing facilities under the jurisdiction of a department or agency of the United States, no rental charge for occupancy of family units designated as other than public

quarters shall be made against the basic allowance for quarters of a member of a uniformed service in excess of 75 per centum of such allowance, except that in no event shall the net rental value charged to the member's basic allowance for quarters be less than the costs of maintaining and operating the housing.

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Continual surveillance and periodic surveys of quarters; exemption of quarters

(g) The Secretaries of Defense and Health, Education, and Welfare, in order to insure as far as possible that family housing under their jurisdiction is adequate as public quarters and fully utilized, shall maintain such continual surveillance and conduct such periodic surveys of such quarters as they shall deem necessary for this purpose. Where either Secretary or his designee determines, on the basis of such surveys, that it is not in the best interest of the United States to improve, demolish, or otherwise dispose of any quarters which have been determined inadequate under this section, he may exempt such quarters from the requirements of subsection (e) of this section: *Provided*, That any quarters so exempted must be improved, demolished, or otherwise disposed of not later than July 1, 1965: *And provided further*, That the Secretary of Defense, or his designee, may exempt from this requirement any housing at any particular installation as to which he determines that (1) the housing is safe, decent, and sanitary, so as to be suitable for occupancy; (2) the housing cannot be made adequate as public quarters with a reasonable expenditure of funds; (3) the rentals charged to, or the allowances forfeited by, the occupants are not less than the costs of maintaining and operating the housing; and (4) there is a continuing need which cannot appropriately be met by privately owned housing in the area. Any such housing so exempted in connection with depot-type installations, as to which the Secretary of Defense, or his designee, determines, subsequent to July 1, 1967, that indefinite retention may be necessary to satisfy unanticipated housing requirements resulting from future expanded activity at such installations, may be retained and utilized as necessary, notwithstanding that the foregoing criteria are no longer satisfied.

As amended Pub.L. 89–568, Title V, § 502, Sept. 12, 1966, 80 Stat. 753; Pub.L. 90–110, Title VI, § 608, Oct. 21, 1967, 81 Stat. 305.

1967 Amendment. Subsec. (g). Pub.L. 90–110 provided for retention and utilization of quarters exempted in connection with depot-type installations to satisfy housing requirements resulting from expanded activity at such installations.

1966 Amendment. Subsec. (a). Pub.L. 89–568 added provision that no member of the uniformed services shall be charged more than 75 percent of his basic allowance for quarters to live in inadequate quarters under the jurisdiction of any of the uniformed services except that in no event shall the net rental value charged to the member's basic allowance for quarters be less than the cost of maintaining and operating the housing.

Transfer of Functions. The Coast and Geodetic Survey was consolidated with the Weather Bureau of the Department of Commerce to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration by Reorg.Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. All personnel (including commissioned officers) of the Survey and all property held or used by the Survey were deemed transferred to the Administration, and all functions of the Survey were transferred to the Secretary of Commerce.

Delegation of Functions. Functions of the President under subsection (b) of this section delegated to the Director of the Bureau of the Budget, see section 1 (22) of Ex.Ord.No.11230, June 28, 1965, 30 F.R. 8447, set out as a note under section 301 of Title 3, The President.

EXECUTIVE ORDER NO. 10766

Ex.Ord.No.10766, May 2, 1958, 23 F.R. 2981, set out as a note under this section, which authorized delegation of authority of President to approve regulations to the Director of The Bureau of the Budget, was superseded by section 2(4) of Ex.Ord. No.11230, June 28, 1965, 30 F.R. 8447, set out as a note under section 301 of Title 3, The President.

§ 1594k. Foreign countries; guarantee of rental return to builders or other sponsors; limitation on amount; period; unit limitation

For the purpose of providing military family housing in foreign countries, the Secretary of Defense is authorized to enter into agreements guaranteeing the builders or other sponsors of such housing a rental re-

turn equivalent to a specified portion of the annual rental income which the builders or other sponsors would receive from the tenants if the housing were fully occupied: *Provided,* That the aggregate amount guaranteed under such agreements entered into during the fiscal years 1969 and 1970 shall not exceed such amount as may be applicable to five thousand units: *Provided further,* That no such agreement shall guarantee the payment of more than 97 per centum of the anticipated rentals, nor shall any guarantee extend for a period of more than ten years, nor shall the average guaranteed rental on any project exceed $185 per unit per month, including the cost of maintenance and operation.

As amended Pub.L. 89–188, Title V, § 505, Sept. 16, 1965, 79 Stat. 814; Pub.L. 90–110, Title VI, § 605, Oct. 21, 1967, 81 Stat. 304; Pub.L. 90–408, Title VI, § 607, July 21, 1968, 82 Stat. 388.

1968 Amendment. Pub.L. 90-408, in substituting "1969 and 1970" for "1968 and 1969", provided for guaranteed rental for fiscal year 1970.

1967 Amendment. Pub.L. 90–110 authorized guarantee of rental return to other sponsors and increased guaranteed rental limitation from $150 for fiscal years 1966 and 1967 to $185 for fiscal years 1968 and 1969.

1965 Amendment. Pub.L. 89–188 substituted provision for guarantee of rental return to builders for agreements entered into during fiscal years 1966 and 1967 for former provision for such guarantee for fiscal years 1964 and 1965.

Legislative History: For legislative history and purpose of Pub.L. 90-408, see 1968 U.S.Code Cong. and Adm.News, p. —.

CHAPTER 11.—COMPENSATION FOR DISABILITY OR DEATH TO PERSONS EMPLOYED AT MILITARY, AIR, AND NAVAL BASES OUTSIDE THE UNITED STATES

§ 1651. Compensation authorized

Supplementary Index to Notes

½. Construction

This chapter requiring payment of compensation benefits under Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, for injury or death of employees sent away from home on overseas missions must be liberally construed in conformance with its purpose and in way which avoids harsh and incongruous results. O'Keeffe v. Pan Am. World Airways, Inc., C.A.Fla.1964, 338 F.2d 319, certiorari denied 85 S.Ct. 1083, 380 U.S. 951, 13 L.Ed.2d 969.

1. Purpose

The coverage provisions of this chapter clearly evidence the congressional intent that this chapter shall afford the sole remedy for injuries or death suffered by employees in the course of employments which fall within its scope. Flying Tiger Lines, Inc. v. Landy, C.A. Cal.1966, 370 F.2d 46.

2. Coverage under local law

Election of employee injured in employment at Air Force Base in Alaska to proceed under Alaska Workmen's Compensation Act did not preclude subsequent proceeding under this chapter following dismissal of his claim under the Alaska Act as time barred. Budson Co., Contract 926 v. Oikari, D.C.Ill.1967, 270 F.Supp. 611.

Where minor children of deceased airplane pilot were entitled to an award under this section for death of their father and a payment had already been made by California Industrial Accident Commission, credit was correctly given on federal award only for the actual amount paid over under state award. Flying Tiger Lines, Inc. v. Landy, D.C.Cal.1965, 250 F.Supp. 282.

3. Determination of coverage

Death of government contractor's recreation supervisor on Grand Turk Island in scooter accident while returning home from social visit after regular working hours arose out of and in course of employment, and his death was compensable under this chapter requiring payment of compensation benefits under Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, for death of employees sent away from home on overseas missions. O'Keeffe v. Pan Am. World Airways, Inc., C.A.Fla.1964, 338 F.2d 319, certiorari denied 85 S.Ct. 1083, 380 U.S. 951, 13 L.Ed.2d 969.

Under this chapter defining disability as incapacity because of injury to earn wages employee was receiving at time of injury in same or any other employment, extent of claimant's disability must be evaluated in economic sense rather than purely in medical terms, and ability to earn in open labor market rather than ability to secure exceptional consideration from sympathetic employer is test of disability. Cunnyngham v. Donovan, D.C.La.1967, 271 F.Supp. 508.

Employee who as result of injuries sustained while employed at overseas United States military installation suffered loss of one leg above the knee and 35% permanent disability in other leg and who could not compete successfully in labor market or command same wage as he did at time he was injured and who was over 50 years of age was permanently and totally disabled within meaning of this chapter. Id.

Informal writings are liberally construed in determining whether a claim has been filed under this chapter

Budson Co., Contract 926 v. Oikari, D.C. Mich.1967, 270 F.Supp. 611.

Letter directed by claimant's attorneys, within a year after claimant's injury, to employer's insurer which in turn transmitted the letter to deputy commissioner gave adequate notice that claim would be filed under this chapter and the claim was thus timely. Id.

Allegations that plaintiff's decedent was riding in defendant's airplane as a ground employee for purpose of unloading freight from airplane which crashed, but was not paid until arrival and was not an employee en route, were not so clear and unequivocal as to show that case should have been brought under workmen's compensation statute, state or federal, rather than under this chapter. Lieb v. Interior Enterprises, Inc., Alaska 1964, 395 P.2d 32.

4. Exclusiveness of remedy

Dependents of a pilot killed while carrying out a transportation contract entered into by his employer with the United States Air Force were not precluded from seeking benefits under this chapter by reason of their having sought and recovered benefits under a state workmen's compensation act on theory of res judicata. Flying Tiger Lines, Inc. v. Landy, C.A.Cal.1966, 370 F.2d 46.

Dependents of a pilot who was killed while carrying out a transportation contract entered into by his employer and the United States Air Force were not barred from recovery of benefits under this chapter by their application for benefits under a state workmen's compensation act, on theory that their application for state benefits constituted an election of remedies, in view of fact that this chapter afforded the sole remedy for the pilot's death. Id.

Whatever the result under state law, federal remedy provided by this section is exclusive and the state result is not res judicata with respect to claim under federal act. Flying Tiger Lines, Inc. v. Landy, D.C.Cal.1965, 250 F.Supp. 282.

4a. Credit for amount paid

In computing amount of credit to be given defendants against whom an award of death benefits was made under this chapter for payments made under a state award, defendants were entitled to credit for total amount of state award, rather than amount actually paid, where after payment of a number of weekly installments, defendants paid, in a lump sum, a discounted amount which added to installment payments was sufficient to satisfy the total original obligation. Flying Tiger Lines, Inc. v. Landy, C.A.Cal.1966, 370 F.2d 46.

Credit for an amount already paid over to claimants under provisions of this section is not given because an award has been made by a state agency, but credit is given because amount paid over should be treated as an advance payment on federal liability. Flying Tiger Lines, Inc. v. Landy, D.C.Cal.1965, 250 F.Supp. 282.

4a. Counsel fees

Where litigation involved in obtaining award of disability benefits under this chapter lasted almost seven years and involved several hearings and appeals and compensation order would cause claimant to be paid approximately $67,000, attorney fee of $6,500 would be authorized. Cunnyngham v. Donovan, D.C. La.1967, 271 F.Supp. 508.

5. Public work

A contract between an air carrier and the United States Air Force for transportation of military personnel from an air force base in California to Viet Nam was a "public work" contract under this chapter. Flying Tiger Lines, Inc. v. Landy, C.A.Cal.1966, 370 F.2d 46.

Agreement between United States and private airline for transportation of military personnel from United States to Vietnam was a "public work" contract within meaning of this section. Flying Tiger Lines, Inc. v. Landy, D.C.Cal.1965, 250 F. Supp. 282.

Congress intends that service contracts which do not provide directly for construction, alteration, removal or repair be included within the definition of "public work" as used in this section. Id.

10. Employment at bases

Injury suffered by electric company employee in Guam when he was struck by truck while thumbing ride back from restaurant to campsite after he had rejected company supplied bus transportation, arose out of and in course of his employment and he was entitled to benefits under Longshoremen's and Harbor Workers' Compensation Act, section 903 of Title 33, as extended by this section. Takara v. Hanson, C.A.Hawaii 1966, 369 F.2d 392.

15a. Pleadings

Libelants suing under the Death on the High Seas Act, section 761 et seq. of Title 46, for deaths of decedents when an airplane disappeared were not entitled to make decedents' employer an additional defendant where statute of limitations barred any claim that libelants might have against such employer as against contention that libelants operated under mistake thinking that because decedents were covered by this section their employer could not be sued so as to make the doctrine of relation back applicable. Storey v. Garrett Corp., D.C.Cal.1967, 43 F.R.D. 301.

Libelants suing under Death on the High Seas Act, section 761 et seq. of Title 46, for death of decedents who had been employed on United States Military Bases and hence were covered by this section which provides that remedy therein is exclusive were not entitled to add decedents' employer as additional defendant even if statute of limitations had not run in employer's favor, since under this section the employer was immune from suit. Id.

16a. Burden of proof

Claimant for disability benefits under this chapter did not have burden to disprove his ability to obtain and hold jobs which might conceivably be considered available to him. Cunnyngham v. Donovan, D.C.LA.1967, 271 F.Supp. 508.

17. Evidence, sufficiency of

Determination of Deputy Commissioner that drowning of decedent employed at defense base in South Korea while boating on Saturday outing at lake 30 miles from jobsite arose out of and in the course of his employment was not irrational or without substantial evidence on the record as a whole. O'Keefe v. Smith, Hinchman and Grylls Associates, Inc., Fla.1965, 85 S.Ct. 1012, 380 U.S. 359, 13 L.Ed.2d 895.

Evidence supported findings upon the basis of which commissioner concluded that death of employee from injuries sustained when employer's jeep which he and other employees were using for recreation overturned on small island in the Bahamas where they were employed arose out of and in course of employment, though employer provided recreational facilities and accident occurred when employees were seeking recreation elsewhere. Pan Am. World Airways Inc. v. O'Hearne, C.A.Va.1964, 335 F.2d 70, certiorari denied 85 S.Ct. 1080, 380 U.S. 950, 13 L.Ed.2d 968.

Commissioner's findings on questions of permanency of claimant's disability and cause thereof were supported by substantial evidence, in compensation proceeding under Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, as extended by this chapter. Budson Co., Contract 926 v. Oikari, D.C.Ill.1967, 270 F.Supp. 611.

19. Settlement with third party
Compromise settlements, without employer's consent, of actions against third party for wrongful death of employees rendered moot the issue of claims to workmen's compensation death benefits. O'Leary v. Alaska Airlines, Inc., C.A. Wash.1964, 336 F.2d 668.

20. Review
Judicial review of administrative determinations of scope of employment under this chapter which requires payment of compensation benefits under Longshoremen's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, for injury or death of employees sent away from home on overseas missions is limited by substantial evidence test. O'Keeffe v. Pan Am. World Airways, Inc., C.A.Fla.1964, 338 F.2d 319, certiorari denied 85 S.Ct. 1083, 380 U.S. 951, 13 L.Ed.2d 969.
In reviewing findings of commissioner who had proper authority to hear claim under this chapter district court was limited to determination of whether the findings were supported by substantial evidence. Budson Co., Contract 926 v. Oikari, D.C.Ill.1967, 270 F.Supp. 611.

§ 1654. Persons excluded from benefits

Supplementary Index to Notes

Construction with other laws ½

½. Construction with other laws
Under this chapter giving persons who are subject to it the remedies of the Longshoreman's and Harbor Workers' Compensation Act, section 901 et seq. of Title 33, it is fair inference that the class intended to be excluded in both is the same. Flying Tiger Lines, Inc. v. Landy, D.C.Cal.1965, 250 F.Supp. 282.

1. Course of employment
Determination of Deputy Commissioner that drowning of decedent employed at defense base in South Korea while boating on Saturday outing at lake 30 miles from jobsite arose out of and in the course of his employment was not irrational or without substantial evidence on the record as a whole. O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc., Fla.1965, 85 S.Ct. 1012, 380 U.S. 359, 13 L.Ed.2d 895.

3. Member of a crew
Death of civilian pilot of airplane transporting military personnel under contract between United States and airline was not excluded by this section from protection of section 903 of Title 33 which excluded coverage for master or member of a crew of any "vessel". Flying Tiger Lines, Inc. v. Landy, D.C.Cal.1965, 250 F.Supp. 282.

4. Crew of aircraft
An award of death benefits under this chapter to beneficiaries of a pilot killed in carrying out a transportation contract was not contrary to this section providing that it shall not apply in respect to injury or death of a master or member of a crew of any vessel, the deceased pilot not being a "master or member of a crew of any vessel" within meaning of such limiting language. Flying Tiger Lines, Inc. v. Landy, C.A.Cal.1966, 370 F.2d 46.

CHAPTER 13.—SCHOOL LUNCH PROGRAMS

§ 1752. Appropriations

For each fiscal year there is authorized to be appropriated, out of money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Secretary of Agriculture (hereinafter referred to as the "Secretary") to carry out the provisions of this chapter, other than sections 1759a and 1761 of this title.

As amended May 8, 1968, Pub.L. 90–302, § 1, 82 Stat. 117.

1968 Amendment. Pub.L. 90–302 added section 1761 to the enumeration of sections excepted from the application of this section.

Appropriations as functions of Department of Health, Education, and Welfare. Section 1 of Pub.L. 90–302 provided in part that appropriations shall be considered Health, Education, and Welfare functions for budget purposes rather than functions of Agriculture.

Legislative History: For legislative history and purpose of Pub.L. 90-302, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1755. Direct expenditures for agricultural commodities and other foods

The funds appropriated for any fiscal year for carrying out the provisions of this chapter, except section 1761 of this title less not to exceed 3½ per centum thereof made available to the Secretary for his administrative expenses, less the amount apportioned by him pursuant to sections 1753, 1754, and 1759 of this title, and less the amount appropriated pursuant to section 1759a of this title, shall be available to the Secretary during such year for direct expenditure by him for agricultural commodities and other foods to be distributed among the States and schools participating in the school-lunch program under this chapter in accordance with the needs as determined by the local school authorities. The provisions of law contained in the proviso of section 713c of Title 15, facilitating operations with respect to the purchase and disposition of surplus agricultural commodities under section 612c of Title 7, shall, to the extent not inconsistent with the provisions of this chapter, also be applicable to expenditures of funds by the Secretary under this chapter.

As amended May 8, 1968, Pub.L. 90–302, § 2(a), 82 Stat. 117.

1968 Amendment. Pub.L. 90–302 added "except section 1761 of this title" following "The funds appropriated for any fiscal year for carrying out the provisions of this chapter,".

Legislative History: For legislative history and purpose of Pub.L. 90-302, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1758. Nutritional and other program requirements; donation of agricultural commodities

Lunches served by schools participating in the school-lunch program under this chapter shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research; except that such minimum nutritional requirements shall not be construed to prohibit the substitution of foods to accommodate the medical or other special dietary needs of individual students. Such meals shall be served without cost or at a reduced cost to children who are determined by local school authorities to be unable to pay the full cost of the lunch. No physical segregation of or other discrimination against any child shall be made by the school because of his inability to pay. School-lunch programs under this chapter shall be operated on a nonprofit basis. Each school shall, insofar as practicable, utilize in its lunch program commodities designated from time to time by the Secretary as being in abundance, either nationally or in the school area, or commodities donated by the Secretary. Commodities purchased under the authority of section 612c of Title 7, may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in the school-lunch program under this chapter as well as to other schools carrying out nonprofit school-lunch programs and institutions authorized to receive such commodities.

As amended May 8, 1968, Pub.L. 90–302, § 2(b), 82 Stat. 117.

1968 Amendment. Pub.L. 90–302 provided that the minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research which the lunches served by participating schools must meet could not be construed to prohibit the substitution of foods to accommodate the medical or other special dietary needs of individual students.

Legislative History: For legislative history and purpose of Pub.L. 90-302, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1761. Special food service program for children—Authorization of appropriations

(a) (1) There is authorized to be appropriated $32,000,000 for each of the three fiscal years ending June 30, 1969, June 30, 1970, and June 30, 1971, to enable the Secretary to formulate and carry out a pilot program to assist States through grants-in-aid and other means, to initiate, maintain, or expand nonprofit food service programs for children in service institutions. For purposes of this section, the term "service institutions" means private, nonprofit institutions or public institutions, such as child day-care centers, settlement houses, or recreation centers, which

provide day care, or other child care where children are not maintained in residence, for children from areas in which poor economic conditions exist and from areas in which there are high concentrations of working mothers, and includes public and private nonprofit institutions providing day care services for handicapped children.

(2) Subject to all the provisions of this section, the term "service institutions" also includes public or private nonprofit institutions that develop special summer programs providing food service similar to that available to children under the National School Lunch or School Breakfast Programs during the school year, including such institutions providing day care services for handicapped children.

Formula for apportionment of funds

(b) (1) Of the funds appropriated for the purposes of this section for any fiscal year, the Secretary shall reserve 2 per centum for apportionment to Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands shall each be paid an amount which bears the same ratio to the total of such reserved funds as the number of children aged three to seventeen, inclusive, in each bears to the total number of children of such ages in all of them.

(2) From the remainder of the funds appropriated for any fiscal year, the Secretary shall pay to each State such sums as he deems appropriate, but not more than $50,000, as a basic grant. In addition, the Secretary shall allot to each State from the funds remaining after the basic grants have been made an amount which bears the same ratio to such remaining funds as the number of children in that State aged three to seventeen, inclusive, in families with incomes of less than $3,000 per annum bears to the total number of such children in all the States. For the purposes of this paragraph, the term "State" does not include Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

State disbursements to service institutions; situations of severe need; purchase and rental of equipment

(c) (1) Funds paid to any State under this section shall be disbursed by the State educational agency to service institutions, selected on a nondiscriminatory basis by the State educational agency, (A) to reimburse the service institutions for the cost of obtaining agricultural commodities and other foods, and (B) for the purposes of paragraphs (2) and (3) of this subsection. The costs of obtaining agricultural commodities and other foods may include the cost of the processing, distributing, transporting, or handling thereof. Disbursement to participating service institutions shall be made at such rate of reimbursement per meal as the Secretary shall prescribe.

(2) In circumstances of severe need where the rate per meal established by the Secretary is insufficient to carry on an effective feeding program, the Secretary may authorize financial assistance not to exceed 80 per centum of the operating costs of such a program, including the cost of obtaining, preparing, and serving food. In the selection of institutions to receive assistance under this subsection, the State educational agency shall require the applicant institutions to provide justification of the need for such assistance.

(3) Not to exceed 25 per centum of the funds paid to any State may be used by the State to assist service institutions by paying not to exceed 75 per centum of the cost of the purchase or rental of equipment, other than land and buildings, for the storage, preparation, transportation, and serving of food to enable the service institutions to establish, maintain, and expand food service under this section.

Direct disbursement to service institutions by Secretary

(d) If in any State the State educational agency is not permitted by law or is otherwise unable to disburse the funds paid to it under this section to any service institution in the State, the Secretary shall withhold all funds apportioned under this section and shall disburse the funds so withheld directly to service institutions in the State for the same purpose and subject to the same conditions as are required of a State educational agency disbursing funds made available under this section.

Continuing availability of unobligated appropriated funds

(e) Notwithstanding the provisions of any other law, balances of funds appropriated for the purposes of this section and unobligated at the end of any fiscal year shall remain available for obligation during the first three months of the following fiscal year.

Nutritional standards

(f) Service institutions to which funds are disbursed under this section shall serve meals consisting of a combination of foods and meeting minimum nutritional standards prescribed by the Secretary on the basis of tested nutritional research. Such meals shall be served without cost or at a reduced cost to children determined by the service institutions to be unable to pay the full cost. In making such determination, service institution authorities should, to the extent practicable, consult with public welfare and health agencies. No physical segregation or other discrimination against any child shall be made because of his inability to pay.

Additional funds; apportionment of unused funds

(g) If any State cannot utilize all funds apportioned to it, or if additional funds are made available for apportionment among the States, under this section, the Secretary shall make further apportionments to the remaining States in the manner prescribed in subsection (b) of this section.

Certification to Secretary of the Treasury; use of donated foods; nontaxability of assistance; administrative expenses; recordkeeping

(h) (1) The Secretary shall certify to the Secretary of the Treasury from time to time the amounts to be paid to any State under this section and the time or times such amounts are to be paid; and the Secretary of the Treasury shall pay to the State at the time or times fixed by the Secretary the amounts so certified.

(2) Each service institution participating under this section shall, insofar as practicable, utilize in its program foods designated from time to time by the Secretary as being in abundance, either nationally or in the institution area, or foods donated by the Secretary. Irrespective of the amount of funds appropriated under this section, foods available under section 1431 of Title 7 or purchased under section 612c of Title 7, or section 1446a–1 of Title 7, may be donated by the Secretary to service institutions in accordance with the needs as determined by authorities of these institutions for utilization in their feeding programs.

(3) The value of assistance to children under this section shall not be considered to be income or resources for any purpose under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs. Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(4) There is hereby authorized to be appropriated for any fiscal year such sums as may be necessary to the Secretary for his administrative expenses under this section.

(5) States, State educational agencies, and service institutions participating in programs under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether

there has been compliance with this section and the regulations hereunder. Such accounts and records shall at all times be available for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines is necessary.

June 4, 1946, c. 281, § 13, as added May 8, 1968, Pub.L. 90–302, § 3, 82 Stat. 117.

Legislative History: For legislative history and purpose of Pub.L. 90-302, see 1968 U.S.Code Cong. and Adm.News, p. —.

CHAPTER 13A.—CHILD NUTRITION [NEW]

§ 1771. Congressional declaration of purpose

In recognition of the demonstrated relationship between food and good nutrition and the capacity of children to develop and learn, based on the years of cumulative successful experience under the national school lunch program with its significant contributions in the field of applied nutrition research, it is hereby declared to be the policy of Congress that these efforts shall be extended, expanded, and strengthened under the authority of the Secretary of Agriculture as a measure to safeguard the health and well-being of the Nation's children, and to encourage the domestic consumption of agricultural and other foods, by assisting States, through grants-in-aid and other means, to meet more effectively the nutritional needs of our children. Pub.L. 89–642, § 2, Oct. 11, 1966, 80 Stat. 885.

Short Title. Section 1 of Pub.L. 89–642 provided: "That this Act [enacting this chapter] may be cited as the 'Child Nutrition Act of 1966'."

Legislative History. For legislative history and purpose of Pub.L. 89–642, see 1966 U.S.Code Cong. and Adm.News, p. 3180.

§ 1772. Program to encourage the consumption of fluid milk by children; authorization of appropriations

There is hereby authorized to be appropriated for the fiscal year ending June 30, 1967, not to exceed $110,000,000; for the fiscal year ending June 30, 1968, not to exceed $115,000,000; and for each of the two succeeding fiscal years not to exceed $120,000,000, to enable the Secretary of Agriculture, under such rules and regulations as he may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (1) nonprofit schools of high school grade and under,

and (2) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children. For the purposes of this section "United States" means the fifty States and the District of Columbia. The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as he administered the special milk program provided for by Public Law 85–478, as amended, during the fiscal year ended June 30, 1966. Pub.L. 89–642, § 3, Oct. 11, 1966, 80 Stat. 885.

References in Text. Pub.L. 89–478, as amended, referred to in text, is set out as a note under section 1446 of Title 7, Agriculture.

§ 1773. School breakfast program—Establishment; authorization of appropriations

(a) There is hereby authorized to be appropriated for the fiscal year 1969, $6,500,000; and for the fiscal year 1970 not to exceed $10,000,000; and for the fiscal year 1971 not to exceed $12,000,000 to carry out a program to assist the States through grants-in-aid and other means to initiate, maintain, or expand nonprofit breakfast programs in schools. Appropriations and expenditures for this chapter shall be considered Health, Education, and Welfare functions for budget purposes rather than functions of Agriculture.

Apportionment of funds to states

(b) Of the funds appropriated for the purposes of this section, the Secretary shall for each fiscal year, (1) apportion $2,600,000 equally among the States other than Guam, the Virgin Islands, and American Samoa, and $45,000 equally among Guam, the Virgin Islands, and American Samoa, and (2) apportion the remainder among the States in accordance with the apportionment formula contained in section 1753 of this title.

Disbursement of apportioned funds by State; preference for schools in poor economic areas and for students traveling long distances daily

(c) Funds apportioned and paid to any State for the purpose of this section shall be disbursed by the State educational agency to schools selected by the State educational agency, to reimburse such schools for the cost of obtaining agricultural and other foods for consumption by needy children in a breakfast program and for the purpose of subsection (d) of this section. Such food costs may include, in addition to the purchase price, the cost of processing, distributing, transporting, storing, and handling. Disbursement to schools shall be made at such rates per meal or on such other basis as the Secretary shall prescribe. In selecting schools, the State educational agency shall, to the extent practicable, give first consideration to those schools drawing attendance from areas in which poor economic conditions exist and to those schools to which a substantial proportion of the children enrolled must travel long distances daily.

Increased financial assistance in cases of severe need

(d) In circumstances of severe need where the rate per meal established by the Secretary is deemed by him insufficient to carry on an effective breakfast program in a school, the Secretary may authorize financial assistance up to 80 percentum of the operating costs of such a program, including cost of obtaining, preparing, and serving food. In the selection of schools to receive assistance under this section, the State educational agency shall require applicant schools to provide justification of the need for such assistance.

Nutritional requirements; limitation of recipient children to children unable to pay full cost

(e) Breakfasts served by schools participating in the school breakfast program under this section shall consist of a combination of foods and shall meet minimum nutritional requirements prescribed by the Secretary

on the basis of tested nutritional research. Such breakfasts shall be served without cost or at a reduced cost only to children who are determined by local school authorities to be unable to pay the full cost of the breakfast. In making such determinations, such local authorities should, to the extent practicable, consult with public welfare and health agencies. No physical segregation of or other discrimination against any child shall be made by the school because of his inability to pay.

Nonprofit private schools

(f) The withholding of funds for and disbursement to nonprofit private schools will be effected in accordance with section 1759 of this title, exclusive of the matching provisions thereof. Pub.L. 89–642, § 4, Oct. 11, 1966, 80 Stat. 886, amended Pub.L. 90–302, § 5, May 8, 1968, 82 Stat. 119.

1968 Amendment. Subsec. (a). Pub.L. 90-302 added authorization to appropriate $6,500,000 for fiscal year 1969, not to exceed $10,000,000 for fiscal year 1970, and not to exceed $12,000,000 for fiscal year 1971, struck out references to authorization for fiscal years 1967 and 1968 and to pilot programs conducted on a nonpartisan basis, and added provision that appropriations and expenditures for this chapter be considered Health, Education, and Welfare functions for budget purposes rather than functions of Agriculture.

Legislative History: For legislative history and purpose of Pub.L. 90-302, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1774. Nonfood assitance program—Establishment; equipment required for food service programs; authorization of appropriations

(a) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1967, not to exceed $12,000,000, for the fiscal year ending June 30, 1968, not to exceed $15,000,000, for each of the two fiscal years ending June 30, 1969, and June 30, 1970, not to exceed $18,000,000, and for each fiscal year thereafter such sums as the Congress may hereafter authorize, to enable the Secretary to formulate and carry out a program to assist the States through grants-in-aid and other means to supply schools drawing attendance from areas in which poor economic conditions exist with equipment, other than land or buildings, for the storage, preparation, transportation, and serving of food to enable such schools to establish, maintain, and expand school food service programs. In the case of nonprofit private schools, such equipment shall be for use of such schools principally in connection with child feeding programs authorized in this chapter and in the National School Lunch Act, as amended, and in the event such equipment is no longer so used, that part of such equipment financed with Federal funds, or the residual value thereof, shall revert to the United States.

Apportionment of funds to states

(b) The Secretary shall apportion the funds, appropriated for the purposes of this section among the States during each fiscal year on the same basis as apportionments are made under section 1753 of this title for supplying agricultural and other foods, except that apportionment, to American Samoa for any fiscal year shall be on the same basis as the apportionment to the other States. Payments to any State of funds apportioned for any fiscal year shall be made upon condition that at least one-fourth of the cost of any equipment financed under this subsection shall be borne by State or local funds.

Disbursement of apportioned funds by State; determination of need; approval of plans

(c) Funds apportioned and paid to any State for the purpose of this section shall be disbursed by the State educational agency to assist schools, which draw attendance from areas in which poor economic conditions exist and which have no, or grossly inadequate, equipment, to conduct a school food service program, and to acquire such equipment. In the selection of schools to receive assistance under this section, the State educational agency shall require applicant schools to provide justification of the need for such assistance and the inability of the school to finance

the food service equipment needed. Disbursements to any school may be made, by advances or reimbursements, only after approval by the State educational agency of a request by the school for funds, accompanied by a detailed description of the equipment to be acquired and the plans for the use thereof in effectively meeting the nutritional needs of children in the school.

Nonprofit private schools

(d) The withholding of funds for and disbursement to nonprofit private schools will be effected in accordance with section 1759 of this title, exclusive of the matching provision thereof. Pub.L. 89–642, § 5, Oct. 11, 1966, 80 Stat. 887.

References in Text. The National School Lunch Act, as amended, referred to in subsec. (a), is classified to chapter 13 of this title.

§ 1775. Certification to Secretary of the Treasury of amounts to be paid to States

The Secretary shall certify to the Secretary of the Treasury from time to time the amounts to be paid to any State under sections 1772 through 1776 of this title and the time or times such amounts are to be paid; and the Secretary of the Treasury shall pay to the State at the time or times fixed by the Secretary the amounts so certified. Pub.L. 89–642, § 6, Oct. 11, 1966, 80 Stat. 888.

§ 1776. State administrative expenses

The Secretary may utilize funds appropriated under this section for advances to each State educational agency for use for its administrative expenses in supervising and giving technical assistance to the local school districts in their conducting of programs under this chapter and under sections 1759a and 1761 of this title. Such funds shall be advanced only in amounts and to the extent determined necessary by the Secretary to assist such State agencies in the administration of additional activities undertaken by them under sections 1759a, 1761, 1773 and 1774 of this title. There are hereby authorized to be appropriated such sums as may be necessary for the purposes of this section.

Pub.L. 89–642, § 7, Oct. 11, 1966, 80 Stat. 888, amended Pub.L. 90–302, § 4, May 8, 1968, 82 Stat. 119.

1968 Amendment. Pub.L. 90-302 added the programs under sections 1759a and 1761 of this title to the enumeration of programs in which appropriated funds could be used for administrative expenses of local school districts in supervising and giving technical assistance and added section 1761 to the enumeration of sections covering programs of additional activities under which funds could be advanced only in amounts and to the extent determined necessary by the Secretary.

Legislative History: For legislative history and purpose of Pub.L. 90-302, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1777. Use in school breakfast program of food designated as being in abundance or food donated by the Secretary of Agriculture

Each school participating under section 1773 of this title shall, insofar as practicable, utilize in its program foods designated from time to time by the Secretary as being in abundance, either nationally or in the school area, or foods donated by the Secretary. Foods available under section of Title 7 or purchased under sections 612c or 1446a—1 may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in their feeding programs under this chapter. Pub.L. 89–642, § 8, Oct. 11, 1966, 80 Stat. 888.

§ 1778. Nonprofit programs

The food and milk service programs in schools and nonprofit institutions receiving assistance under this chapter shall be conducted on a nonprofit basis. Pub.L. 89–642, § 9, Oct. 11, 1966, 80 Stat. 888.

§ 1779. Rules and regulations

The Secretary shall prescribe such regulations as he may deem necessary to carry out this chapter. Pub.L. 89–642, § 10, Oct. 11, 1966, 80 Stat. 889.

§ 1780. Prohibition against interference with school personnel, curriculum, or instruction; prohibition against inclusion of assistance in determining income or resources for purposes of taxation, welfare, or public assistance programs

(a) In carrying out the provisions of sections 1772 through 1774 of this title, neither the Secretary nor the State shall impose any requirements with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction.

(b) The value of assistance to children under this chapter shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this chapter. Pub. L. 89–642, § 11, Oct. 11, 1966, 80 Stat. 889.

§ 1781. Preschool programs

The Secretary may extend the benefits of all school feeding programs conducted and supervised by the Department of Agriculture to include preschool programs operated as part of the school system. Pub.L. 89–642, § 12, Oct. 11, 1966, 80 Stat. 889.

§ 1782. Centralization in Department of Agriculture of administration of food service programs for children

Authority for the conduct and supervision of Federal programs to assist schools in providing food service programs for children is assigned to the Department of Agriculture. To the extent practicable, other Federal agencies administering programs under which funds are to be provided to schools for such assistance shall transfer such funds to the Department of Agriculture for distribution through the administrative channels and in accordance with the standards established under this chapter and the National School Lunch Act. Pub.L. 89–642, § 13, Oct. 11, 1966, 80 Stat. 889.

References in Text. The National School Lunch Act, referred to in the text, is classified to chapter 13 of this title.

§ 1783. Authorization of appropriations to the Secretary of Agriculture for administrative expenses

There is hereby authorized to be appropriated for any fiscal year such sums as may be necessary to the Secretary for his administrative expense under this chapter. Pub.L. 89–642, § 14, Oct. 14, 1966, 80 Stat. 889.

§ 1784. Definitions

For the purposes of this chapter—

(a) "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(b) "State educational agency" means, as the State legislature may determine, (1) the chief State school officer (such as the State superintendent of public instruction, commissioner of education, or similar officer), or (2) a board of education controlling the State department of education.

(c) "Nonprofit private school" means any private school exempt from income tax under section 501(c)(3) of Title 26.

(d) "School" means any public or nonprofit private school of high school grade or under, including kindergarten and preschool

programs operated by such school and, with respect to Puerto Rico, shall also include nonprofit child-care centers certified as such by the Governor of Puerto Rico.

(e) "Secretary" means the Secretary of Agriculture.

Pub.L. 89–642, § 15, Oct. 11, 1966, 80 Stat. 889.

§ 1785. Accounts and records; availability for inspection

States, State educational agencies, schools, and nonprofit institutions participating in programs under this chapter shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance wtih this chapter and the regulations hereunder. Such accounts and records shall at all times be available for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of three years, as the Secretary determines is necessary. Pub.L. 89–642, § 16, Oct. 11, 1966, 80 Stat. 890.

CHAPTER 15.—DAMAGE BY FLOOD OR OTHER CATASTROPHE

SUBCHAPTER II—ADJUSTMENT AND COORDINATION OF FEDERAL PROGRAMS [NEW]

SUBCHAPTER I—FEDERAL ASSISTANCE PROGRAMS

§ 1855. Declaration of Congressional intent

Index to Notes

1. Contractor's eligibility for relief

Although damage to an irrigation project which the contractor had almost completed for the Bureau of Reclamation before the area was declared a disaster area was caused by an act of God, no relief from liability may be provided the contractor under this subchapter since the intended purpose of this subchapter is to provide emergency assistance to State and local governments to alleviate the immediate effect of disasters without making permanent repairs or rehabilitation, and since nothing in the legislative history can be construed as authority for relief of a contractor from the contractual obligations undertaken by him, the contract may not be amended without a compensating benefit to the Government. 1965, 44 Comp.Gen. 746.

The fact that an irrigation distribution system being constructed under a Bureau of Reclamation contract and which was damaged by floods prior to completion and acceptance is located in a declared major disaster area does not make the contractor eligible for relief under this subchapter for the cost of reconstructing the damage, this subchapter only providing emergency assistance to States and local governments, including districts, to alleviate the immediate effects of disasters, and the permanent improvements remaining the responsibility of local governments, there is no authority to relieve the contractor from the contractual obligations undertaken, and the contract placing the responsibility for damage repair on the contractor until completion and final acceptance of the work, the United States has a vested right to have the irrigation system completed at the contractor's expense, notwithstanding the damage resulted from an act of God, and, therefore, the contract may not be amended without a compensating benefit to the Government. Id.

§ 1855a. Definitions

* * * * * * * * * *

(e) "Local government" means any county, city, village, town, district, or other political subdivision of any State, or the District of Columbia,

and includes any rural community or unincorporated town or village for which an application for assistance is made by a State or local government or governmental agency;

As amended Nov. 6, 1966, Pub.L. 89–769, § 6(a), 80 Stat. 1317.

* * * * * * * * * *

1966 Amendment. Subsec. (e). Pub.L. 89–769 inserted "and includes any rural community or unincorporated town or village for which an application for assistance is made by a State or local government or governmental agency."

Effective Date of 1966 Amendment. Amendment of section by Pub.L. 89–769 applicable with respect to any major disaster occurring after October 3, 1964, see section 14 of Pub.L. 89–769, set out as a note under section 1855aa of this title.

Legislative History: For legislative history and purpose of Pub.L. 89–769, see 1966 U.S.Code Cong. and Adm. News, p. 4135.

§ 1855d. Coordination of Federal activities; rules and regulations

EXECUTIVE ORDER NO. 10427

Jan. 16, 1953, 18 F.R. 407, as amended by Ex.Ord.No.10737, Oct. 29, 1957, 22 F.R. 8799; Ex.Ord.No.10773, July 1, 1958, 23 F.R. 5061; Ex.Ord.No.10782, Sept. 8, 1958, 23 F.R. 6971; Ex.Ord.No.11051; Sept. 28, 1962, 27 F.R. 9683

ADMINISTRATION OF DISASTER RELIEF

* * * * * *

Sec. 4. Nothing in this order shall be construed to prevent any Federal agency from affording such assistance and taking such other action as may accord with the existing policies, practices, or statutory authority of such agency in the event of any disaster which will not permit delay in the commencement of Federal assistance or other Federal action, and pending the determination of the President whether the disaster is a major disaster: Provided, that such assistance and such other action shall be subject to coordination by the Federal Civil Defense Administrator acting on behalf of the President.

* * * * * *

SUBCHAPTER II—ADJUSTMENT AND COORDINATION OF FEDERAL PROGRAMS [NEW]

§ 1855aa. Definitions

As used in this subchapter, the term "major disaster" means a major disaster as determined by the President pursuant to the Act entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes", approved September 30, 1950, as amended.

Pub.L. 89–769, § 2, Nov. 6, 1966, 80 Stat. 1316.

References in Text. "This subchapter" was in the original "this Act", referring to Pub.L. 89–769, which, besides enacting this subchapter, enacted section 758 of Title 20, Education, amended section 1855a of this title, section 1926 of Title 7, Agriculture, section 1715*l* of Title 12, Banks and Banking, section 636 of Title 15, Commerce and Trade, and section 1830 of Title 38, Veterans' Benefits, and enacted provisions set out as a note under this section.

An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes, approved September 30, 1950, as amended, is classified to subchapter 1 of this chapter.

Effective Date. Section 14 of Pub.L. 89–769 provided that: "This Act and the amendments made by this Act [this subchapter and section 758 of Title 20, Education, and amendments to section 1855a of this title, section 1926 of Title 7, Agriculture, section 1715*l* of Title 12, Banks and Banking, section 636 of Title 15, Commerce and Trade, and section 1820 of Title 38, Veterans' Benefits] shall apply with respect to any major disaster occurring after October 3, 1964."

Short Title. Section 1 of Pub.L. 89–769 provided: "That this Act [enacting this subchapter and section 758 of Title 20, Education, amending section 1855a of this title, section 1926 of Title 7, Agriculture, section 1715*l* of Title 12, Banks and Banking, section 636 of Title 15, Commerce and Trade, and section 1830 of Title 38, Veterans' Benefits, and enacting provisions set out as a note under this section] may be cited as the 'Disaster Relief Act of 1966'."

Legislative History: For legislative history and purpose of Pub.L. 89–769, see 1966 U.S.Code Cong. and Adm. News, p. 4135.

§ 1855bb. Rescheduling and refinancing of federal loans

(a) Where such action is found to be necessary because of loss, destruction, or damage of the property, or impairment of the economic feasibility of the system, of borrowers under programs administered by the Rural Electrification Administration, resulting from a major disaster, the Secretary of Agriculture is authorized to adjust and to readjust the schedules for payment of principal and interest on loans to such borrowers, and to extend the maturity dates of such loans to a period not

beyond forty years from the dates of such loans. The authority herein conferred is in addition to the loan extension authority provided in section 912 of Title 7.

(b) The Secretary of Housing and Urban Development is authorized to refinance any note or other obligation which is held by him in connection with any loan made by the Department of Housing and Urban Development or its predecessor in interest, or which is included within the revolving fund for liquidating programs established by the Independent Offices Appropriation Act of 1955, where he finds such refinancing necessary because of the loss, destruction, or damage to property or facilities securing such obligations as a result of a major disaster. The interest rate on any note or other obligation refinanced under this subsection may be reduced to a rate not less than (i) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of such note or other obligation, adjusted to the nearest one-eighth of 1 per centum, less (ii) not to exceed 2 per centum per annum, and the term thereof may be extended for such period as will provide a maturity of not to exceed forty years. The Secretary may authorize a suspension in the payment of principal and interest charges on, and an additional extension in the maturity of, any such loan for a period not to exceed five years if he determines that such action is necessary to avoid severe financial hardship.

Pub.L. 89–769, § 3(a), (b), Nov. 6, 1966, 80 Stat. 1316.

References in Text. The revolving fund, referred to in subsec. (b), for liquidating programs established by the Independent Offices Appropriation Act of 1955 is the fund referred to in section 1701g–5 of Title 12, Banks and Banking.

Effective Date. Section applicable with respect to any major disaster occurring after October 3, 1964, see section 14 of Pub.L. 89–769, set out as a note under section 1855aa of this title.

§ 1855cc. Disaster warnings

The Secretary of Defense is authorized to utilize or to make available to other agencies the facilities of the civil defense communications system established and maintained pursuant to section 2281(c) of Title 50 Appendix, for the purpose of providing needed warning to governmental authorities and the civilian population in areas endangered by imminent natural disasters.

Pub.L. 89–769, § 5, Nov. 6, 1966, 80 Stat. 1317.

Effective Date. Section applicable with respect to any major disaster occurring after October 3, 1964, see section 14 of Pub.L. 89–769, set out as a note under section 1855aa of this title.

§ 1855dd. Priority to applications for public facility and public housings assistance in major disaster areas

In the processing of applications for assistance—

(1) under title II of the Housing Amendments of 1955, or any other Act providing assistance for the repair, construction, or extension of public facilities;

(2) under the United States Housing Act of 1937 for the provision of low-rent housing;

(3) under section 462 of Title 40 for assistance in public works planning;

(4) under section 3102 of this title providing for grants for public facilities; or

(5) under section 1926 of Title 7

priority and immediate consideration shall be given, during such period as the President shall by proclamation prescribe, to applications from public bodies situated in major disaster areas.

Pub.L. 89–769, § 8, Nov. 6, 1966, 80 Stat. 1320.

References in Text. Title II of the Housing Amendments of 1955, referred to in clause (1), is classified to chapter 8B of this title.

The United States Housing Act of 1937, referred to in clause (2), is classified to chapter 8 of this title.

Effective Date. Section applicable with respect to any major disaster occurring after October 3, 1964, see section 14 of Pub.L. 89–769, set out as a note under section 1855aa of this title.

§ 1855ee. Reimbursement of costs of reconstruction of public facilities; eligible costs; agencies and parties entitled to reimbursement

There is hereby authorized to be appropriated such sums as may be necessary to reimburse not more than 50 per centum of eligible costs incurred to repair, restore, or reconstruct any project of a State, county, municipal, or other local government agency for flood control, navigation, irrigation, reclamation, public power, sewage treatment, water treatment, watershed development, or airport construction which was damaged or destroyed as a result of a major disaster, and of the resulting additional eligible costs incurred to complete any such facility which was in the process of construction when damaged or destroyed as a result of such major disaster. Eligible costs are defined to mean those costs determined by the Director of the Office of Emergency Planning as incurred or to be incurred in (1) restoring a public facility to substantially the same condition as existed prior to the damage resulting from the major disaster, and (2) completing construction not performed prior to the major disaster to the extent the increase of such costs over original construction costs is attributable to changed conditions resulting from the major disaster. Reimbursement under this section shall be made to the State, county, municipal, or other local governmental agency which is constructing the public facility or for which it is being constructed, except that if the economic burden of the eligible costs of repair, restoration, reconstruction or completion is incurred by an individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance), the State, county, municipality, or other local governmental agency shall reimburse such individual, partnership, corporation, agency, or other entity not to exceed 50 per centum of those costs. Eligible costs shall not include any costs for which reimbursement is received pursuant to insurance contracts or otherwise by the party incurring the economic burden of such costs.

Pub.L. 89–769, § 9, Nov. 6, 1966, 80 Stat. 1320.

Effective Date. Section applicable with respect to any major disaster occurring after October 3, 1964, see section 14 of Pub.L. 89–769, set out as a note under section 1855aa of this title.

§ 1855ff. Duplication of benefits

The head of each department or agency of the Federal government administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as the result of a major disaster shall administer such program in a manner which will assure that no such person, concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other such program.

Pub.L. 89–769, § 10, Nov. 6, 1966, 80 Stat. 1320.

Effective Date. Section applicable with respect to any major disaster occurring after October 3, 1964, see section 14 of Pub.L. 89–769, set out as a note under section 1855aa of this title.

§ 1855gg. Extensions of time to leaseholders, etc., of public lands in disaster areas

The Secretary of the Interior, upon application therefor, is authorized to grant an extension of time to the holder of any lease, license, permit, contract or entry issued by him in connection with any lands administered by him through the Bureau of Land Management where the

Secretary finds that a major disaster has impeded timely fulfillment of requirements and such relief will not prejudice the rights of another party.

Pub.L. 89–769, § 11, Nov. 6, 1966, 80 Stat. 1321.

Effective Date. Section applicable with respect to any major disaster occurring after October 3, 1964, see section 14 of Pub.L. 89–769, set out as a note under section 1855aa of this title.

§ 1855hh. Coordination and review of assistance programs

The President, acting through the Office of Emergency Planning, shall plan and coordinate all Federal programs providing assistance to persons, business concerns, or other entities suffering losses as the result of a major disaster, and shall conduct periodic reviews (at least annually) of the activities of State and Federal departments or agencies to assure maximum coordination of such programs, and to evaluate progress being made in the development of State and local organizations and plans to cope with major disasters. Nothing in this section shall be deemed to relieve the head of any department or agency of any function, duty, or responsibility vested in him by any provision of law.

Pub.L. 89–769, § 12, Nov. 6, 1966, 80 Stat. 1321.

Effective Date. Section applicable with respect to any major disaster occurring after October 3, 1964, see section 14 of Pub.L. 89–769, set out as a note under section 1855aa of this title.

§ 1855ii. Study of air operation facilities for disaster assistance; report to Congress

The Director of the Office of Emergency Planning is authorized and directed to make, in cooperation with the Secretary of Agriculture, the Secretary of the Interior, and other affected Federal and State agencies, a full and complete study and investigation for the purpose of determining what additional or improved air operation facilities are needed to provide immediate effective action to prevent or minimize loss of publicly or privately owned property and personal injury or death which could result from forest fires or grass fires which are or threaten to become major disasters. The study and investigation shall include but not be limited to—

(1) the need for new or improved airports, heliports, or helispots at specific locations where present transportation facilities are inadequate to provide for immediate and effective action in case of forest fires or grass fires;

(2) the need for additional or improved material, equipment (including aircraft) and personnel at specific locations to provide for immediate and effective action in case of forest fires or grass fires; and

(3) the estimated cost of providing such new or improved air operation facilities (including additional or improved material, equipment, and personnel) at each specific location.

Not later than six months after November 6, 1966, the Director of the Office of Emergency Planning shall report the findings of the study and investigation to the Congress together with his recommendations for an action program, including an equitable plan for the sharing of the cost of the program by the Federal, State and local governments and private persons and organizations.

Pub.L. 89–769, § 13, Nov. 6, 1966, 80 Stat. 1321.

Effective Date. Section applicable with respect to any major disaster occurring after October 3, 1964, see section 14 of Pub.L. 89–769, set out as a note under section 1855aa of this title.

CHAPTER 15B.—AIR POLLUTION CONTROL

SUBCHAPTER I.—AIR POLLUTION PREVENTION AND CONTROL

SUBCHAPTER II.—MOTOR VEHICLE EMISSION STANDARDS

SUBCHAPTER III.—GENERAL PROVISIONS

SUBCHAPTER I.—AIR POLLUTION PREVENTION AND CONTROL

§ 1857. Congressional findings; purposes of subchapter

(a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

July 14, 1955, c. 360, Title I, § 101, formerly § 1, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 392, amended and renumbered Oct. 20, 1965,

Pub.L. 89–272, Title I, § 101(2), (3), 79 Stat. 992; Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 485.

1967 Amendment. Subsec. (b) (1). Pub. L. 90–148 inserted "and enhance the quality of" following "to protect".

1965 Amendment. Subsec. (b). Pub.L. 89–272 substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter."

Short Title. Section 307, formerly section 14, of Act July 14, 1955, as added by section 1 of Pub.L. 88–206, and renumbered by section 101(4) of Pub.L. 89–272, provided that: "This Act [this chapter] may be cited as the 'Clean Air Act'."

Short Title of 1967 Amendment. Section 1 of Pub.L. 90–148 provided: "That this Act [amending this chapter generally] may be cited as the 'Air Quality Act of 1967'."

Short Title. Section 310, formerly section 14, of Act July 14, 1955, as added by section 1 of Pub.L. 88–206, renumbered section 307 by section 101(4) of Pub.L. 89–272, and renumbered section 310 by section 2 of Pub.L. 90–148, provided that: "This Act [this chapter] may be cited as the 'Clean Air Act'."

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub. L. 90–148, 1967 U.S.Code Cong. and Adm. News, p. 1938.

EXECUTIVE ORDER NO. 10779

Ex.Ord.No. 10779, Aug. 21, 1958, 23 F.R. 6487, set out as a note under this section, which related to cooperation of federal agencies with state and local authorities, was superseded by Ex.Ord.No. 11282, May 26, 1966, 31 F.R. 7663, set out as a note under section 1857f of this title.

§ 1857a. Cooperative activities—Interstate cooperation; uniform State laws; State compacts

(a) The Secretary shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

Federal cooperation

(b) The Secretary shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

Consent of Congress to compacts

(c) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after November 21, 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

July 14, 1955, c. 360, Title I, § 102, formerly § 2, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 393, renumbered Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(3), 79 Stat. 992, amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 485.

1967 Amendment. Subsec. (c). Pub.L. 90–148 added declaration that it is the intent of Congress that no agreement or compact entered into between States after the date of enactment of the Air Quality Act of 1967, which for purposes of codification was changed to November 21, 1967, the date of approval of such Act, relating to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1269. See also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub. L. 90–148, 1967 U.S.Code Cong. and Adm. News, p. 1938.

§ 1857b. Research, investigations, training, and other activities—Research and development program for prevention and control of air pollution

(a) The Secretary shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution;

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and indviduals in the conduct of such activities;

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research.

Availability of information and recommendations; cooperative activities; research grants, etc.; contracts; training; fellowships; collection and dissemination of basic data on chemical, physical and biological effects of air quality; process, method and device development

(b) In carrying out the provisions of the preceding subsection the Secretary is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a) (1) of this section;

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 529 of Title 31 and section 5 of Title 41;

(5) provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications;

(6) establish and maintain research fellowships, in the Department of Health, Education, and Welfare and at public or nonprofit private educational institutions or research organizations;

(7) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof; and

(8) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution.

Results of other scientific studies

(c) In carrying out the provisions of subsection (a) of this section the Secretary shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons by the various known air pollution agents (or combinations of agents).

Construction of facilities

(d) The Secretary is authorized to construct such facilities and staff and equip them as he determines to be necessary to carry out his functions under this chapter.

Potential air pollution problems; conference; findings and recommendations of Secretary

(e) If, in the judgment of the Secretary, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, he may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Secretary. If the Secretary finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under section 1857d(a) of this title, he shall send such findings, together with recommendations concerning the measures which he finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (d), (e), and (f) of section 1857d of this title.

July 14, 1955, c. 360, Title I, § 103, formerly § 3, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 394, amended and renumbered Oct. 20, 1965, Pub.L. 89–272, Title I, §§ 101(3), 103, 79 Stat. 992, 996; Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 486.

1967 Amendment. Subsec. (a). Pub.L. 90–148 substituted "establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research" for "initiate and conduct a program of research directed toward the development of improved, low-cost techniques for extracting sulfur from fuels" as clause (4) and struck out clause (5) which related to research programs relating to the control of hydrocarbon emissions from evaporation of gasoline and nitrogen and aldehyde oxide emissions from gasoline and deisel powered vehicles and relating to the development of improved low cost techniques to reduce emissions of oxides of sulfur produced by the combustion of sulfur-containing fuels.

Subsec. (c). Pub.L. 90–148 struck out provision for the promulgation of criteria in the case of particular air pollution agents present in the air in certain quantities reflecting the latest scientific knowledge and allowing for availability and revision and provided for the recommendation by the Secretary of air quality criteria.

Subsec. (e). Pub.L. 90–148 substituted references to subsections (d), (e), and (f) of section 1857d of this title for references to subsections (c), (d), and (e) of section 1857d of this title in the provision for the admission of advisory findings and recommendations together with the record of the conference and made such findings and recommendations part of the proceedings of the conference, not merely part of the record of proceedings. Code Cong. and Adm.News, p. 3608; Pub. L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

1965 Amendment. Subsec. (a) (5). Pub. L. 89–272, § 103(3), added par. (5).

Subsecs. (d), (e). Pub.L. 89–272, § 103(4), added subsecs. (d) and (e).

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub. L. 90–148, 1967 U.S.Code Cong. and Adm. News, p. 1938.

§ 1857b—1. Research relating to fuels and vehicles—Research programs; grants; contracts; pilot and demonstration plants; byproducts research

(a) The Secretary shall give special emphasis to research and development into new and improved methods, having industry-wide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

(1) conduct and accelerate research programs directed toward development of improved, low-cost techniques for control of combustion byproducts of fuels, for removal of potential pollutants from fuels, and for control of emissions from evaporation of fuels;

(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industrywide application of preventing or controlling discharges into the air of various types of pollutants; and (B) carrying out the other provisions of this section, without regard to section 529 of Title 31 and section 5 of Title 41: *Provided*, That research or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of Title 10, except that the determination, approval, and certification required thereby shall be made by the Secretary: *Provided further*, That no grant may be made under this paragraph in excess of $1,500,000;

(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where they can be demonstrated on a large and practical scale;

(4) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of new or improved demonstration plants or processes which have promise of accomplishing the purposes of this chapter;

(5) study new or improved methods for the recovery and marketing of commercially valuable byproducts resulting from the removal of pollutants.

Powers of Secretary in establishing research and development programs

(b) In carrying out the provisions of this section, the Secretary may—

(1) conduct and accelerate research and development of low-cost instrumentation techniques to facilitate determination of quantity and quality of air pollutant emissions, including, but not limited to, automotive emissions;

(2) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories;

(3) establish and operate necessary facilities and test sites at which to carry on the research, testing, development, and programming necessary to effectuate the purposes of this section;

(4) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, and facilities, and other property or rights by purchase, license, lease, or donation; and

(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of the chapter will be served thereby.

Authorization of appropriations

(c) For the purposes of this section there are authorized to be appropriated for the fiscal year ending June 30, 1968, $35,000,000, and for the

fiscal year ending June 30, 1969, $90,000,000. Amounts appropriated pursuant to this subsection shall remain available until expended.
July 14, 1955, c. 360, Title I, § 104, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 487.

Codification. A prior section 104 of Act July 14, 1955, was renumbered section 105 by Pub.L. 90–148 and is set out as section 1857c of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857c. Grants for support of air pollution planning and control programs—Amounts; limitations; "regional air quality control program" defined; assurances of plan development capability

(a) (1) The Secretary is authorized to make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and grants to such agencies in an amount up to one-half of the cost of maintaining, programs for the prevention and control of air pollution and programs for the implementation of air quality standards authorized by this chapter: *Provided*, That the Secretary is authorized to make grants to air pollution control agencies within the meaning of sections 1857h(b) (2) and 1857h(b) (4) of this title in an amount up to three-fourths of the cost of planning, developing, establishing, or improving and up to three-fifths of the cost of maintaining, regional air quality control programs. As used in this subsection the term "regional air quality control program" means a program for the prevention and control of air pollution or the implementation of air quality standards programs as authorized by this chapter, in an area that includes the areas of two or more municipalities whether in the same or different States.

(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 1857h(b) (2) and 1857h(b) (4) of this title, the Secretary shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 1857h(b) (2) and 1857h(b) (4) of this title, the Secretary shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

Terms and conditions; regulations; factors for consideration; expenditure and consultation requirements

(b) From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Secretary shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Secretary may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Secretary shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential air pollution problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Secre-

tary is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Secretary has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

State expenditure limitation

(c) Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Secretary shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends.

July 14, 1955, c. 360, Title I, § 105, formerly § 4, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 395, amended and renumbered § 104, Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(2)–(4), 79 Stat. 992; Oct. 15, 1966, Pub.L. 89–675, § 3, 80 Stat. 954, amended and renumbered § 105, Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 489.

Codification. A prior section 105 of Act July 14, 1955, was renumbered section 108 by Pub.L. 90-148 and is set out as section 1857d of this title.

1967 Amendment. Subsec. (a). Pub.L. 90–148 denominated existing provisions as par. (1), added pars. (2) and (3), and, in par. (1) as so denominated, substituted "regional air quality control program" for "regional air pollution control program", added planning to the list of authorized activities, and added programs for the implementation of air quality standards authorized by this chapter to the list of authorized programs.

Subsec. (b). Pub.L. 90–148 made minor changes in the order of the provisions.

Subsec. (c). Pub.L. 90–148 reduced the percentage limitation on the portion of the total funds which might be granted for air pollution control programs in any one State from 12½ per centum to 10 per centum.

1966 Amendment. Subsec. (a). Pub.L. 89–675, § 3(a) (1), struck out provisions limiting the available funds to 20 per centum of the sums appropriated annually for the purpose of this subchapter, inserted provisions allowing grants to air pollution control agencies up to one-half of the cost of maintaining programs for prevention and control of air pollution, and authorized the Secretary to make grants of up to three-fifths of the cost of maintaining regional air pollution control programs.

Subsec. (b). Pub.L. 89–675, § 3(a) (2), substituted reference to sums available "for the purpose of" subsection (a) of this section for reference to sums available "under" subsection (a) of this section, permitted grantees to reduce annual expenditures to the extent that nonrecurrent costs are involved for purposes of application of the provision that no agency may receive grants during any fiscal year when its expenditures of non-Federal funds for air pollution control programs are less than its expenditures for such programs during the preceding fiscal year, and added provisions insuring that Federal funds will in no event be used to supplant State or local government funds in maintaining air pollution control programs.

Subsec. (c). Pub.L. 89–675, § 3(b), substituted "total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs" for "grant funds available under subsection (a) of this section shall be expended" and authorized the Secretary to determine the portion of grants to interstate agencies to be charged against the twelve and one-half percent limitation of grant funds to any one State.

1965 Amendment. Subsec. (a). Pub.L. 89–272 substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter", and "section 302(b) (2) and (4)" for "section 9(b) (2) and (4)", which for purposes of codification has been changed to "section 1857h (b) (2) and (4) of this title."

Short Title. Section 1 of Pub.L. 89–675 provided: "That this Act [amending this section and section 1857*l* of this title and repealing section 1857f–8 of this title] may be cited as the 'Clean Air Act Amendments of 1966'."

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub.L. 90–148, 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857c—1. Interstate air quality agencies or commissions; program cost limitations; planning commissions

(a) For the purpose of expediting the establishment of air quality standards in an interstate air quality control region designated pursuant to section 1857c–2(a) (2) of this title, the Secretary is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any agency designated by the Governors of the affected States,

which agency shall be capable of recommending to the Governors standards of air quality and plans for implementation thereof and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Secretary is authorized to make grants to such agency in an amount up to three-fourths of the air quality planning program costs of such agency.

(b) (1) Whenever the Secretary deems it necessary to expedite the establishment of standards for an interstate air quality control region designated pursuant to section 1857c–2(a) (2) of this title he may, after consultation with the Governors of the affected States, designate or establish an air quality planning commission for the purpose of developing recommended regulations setting forth standards of air quality to be applicable to such air quality control region.

(2) Such Commission shall consist of the Secretary or his designee who shall serve as Chairman, and adequate representation of appropriate State, interstate, local and (when appropriate), international, interests in the designated air quality control region.

(3) The Secretary shall, within available funds, provide such staff for such Commission as may be necessary to enable it to carry out its functions effectively, and shall pay the other expenses of the Commission; and may also accept for the use by such Commission, funds, property, or services contributed by the State involved or political subdivisions thereof.

(4) Each appointee from a State, other than an official or employee thereof, or of any political subdivision thereof, shall, while engaged in the work of the Commission, receive compensation at a rate fixed by the Secretary, but not in excess of $100 per diem, including traveltime, and while away from his home or regular place of business, he may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (section 3109 of Title 5) for persons in the Government service employed intermittently.

July 14, 1955, c. 360, Title I, § 106, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 490.

Codification. A prior section 106 of Act July 14, 1955, was renumbered section 110 by Pub.L. 90–148 and is set out as section 1857e of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857c—2. Air quality control regions—Atmospheric areas; designation of regions

(a)(1) The Secretary shall, as soon as practicable, but not later than one year after November 21, 1967, define for the purposes of this chapter, atmospheric areas of the Nation on the basis of those conditions, including, but not limited to, climate, meteorology, and topography, which affect the interchange and diffusion of pollutants in the atmosphere.

(2) For the purpose of establishing ambient air quality standards pursuant to section 1857d of this title, and for administrative and other purposes, the Secretary, after consultation with appropriate State and local authorities shall, to the extent feasible, within 18 months after November 21, 1967, designate air quality control regions based on jurisdictional boundaries, urban-industrial concentrations, and other factors including atmospheric areas necessary to provide adequate implementation of air quality standards. The Secretary may from time to time thereafter, as he determines necessary to protect the public health and welfare and after consultation with appropriate State and local authorities, revise the designation of such regions and designate additional air quality control regions. The Secretary shall immediately notify the Governor or Governors of the affected State or States of such designation.

Air quality criteria

(b)(1) The Secretary shall, after consultation with appropriate advisory committees and Federal departments and agencies, from time to

time, but as soon as practicable, develop and issue to the States such criteria of air quality as in his judgment may be requisite for the protection of the public health and welfare: *Provided*, That any criteria issued prior to November 21, 1967, shall be reevaluated in accordance with the consultation procedure and other provisions of this section and, if necessary, modified and reissued. Such issuance shall be announced in the Federal Register and copies shall be made available to the general public.

(2) Such criteria shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on health and welfare which may be expected from the presence of an air pollution agent, or combination of agents in the ambient air, in varying quantities.

(3) Such criteria shall include those variable factors which of themselves or in combination with other factors may alter the effects on public health and welfare of any subject agent or combination of agents, including, but not limited to, atmospheric conditions, and the types of air pollution agent or agents which, when present in the atmosphere, may interact with such subject agent or agents, to produce an adverse effect on public health and welfare.

Pollution control techniques

(c) The Secretary shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on those recommended pollution control techniques the application of which is necessary to achieve levels of air quality set forth in criteria issued pursuant to subsection (b) of this section, including those criteria subject to the proviso in subsection (b)(1) of this section, which information shall include technical data relating to the technology and costs of emission control. Such recommendations shall include such data as are available on the latest available technology and economic feasibility of alternative methods of prevention and control of air contamination including cost-effectiveness analyses. Such issuance shall be announced in the Federal Register and copies shall be made available to the general public.

Revision and reissuance of criteria and techniques

(d) The Secretary shall, from time to time, revise and reissue material issued pursuant to subsections (b) and (c) of this section in accordance with procedures established in such subsections.

July 14, 1955, c. 360, Title I, § 107, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 490.

Codification. A prior section 107 of Act July 14, 1955, was renumbered section 111 by Pub.L. 90–148 and is set out as section 1857f of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857d. Air quality standards and abatement of air pollution—Air pollution subject to abatement

(a) The pollution of the air in any State or States which endangers the health or welfare of any persons, shall be subject to abatement as provided in this section.

Encouragement of municipal, State, and interstate action

(b) Consistent with the policy declaration of this subchapter, municipal, State, and interstate action to abate air pollution shall be encouraged and shall not be displaced by Federal enforcement action except as otherwise provided by or pursuant to a court order under subsection (c), (h), or (k) of this section.

State standards; letter of intent; boards for hearings on standards; members, compensation, and expenses; violations; jurisdiction

(c)(1) If, after receiving any air quality criteria and recommended control techniques issued pursuant to section 1857c–2 of this title, the

Governor of a State, within ninety days of such receipt, files a letter of intent that such State will within one hundred and eighty days, and from time to time thereafter, adopt, after public hearings, ambient air quality standards applicable to any designated air quality control region or portions thereof within such State and within one hundred and eighty days thereafter, and from time to time as may be necessary, adopts a plan for the implementation, maintenance, and enforcement of such standards of air quality adopted, and if such standards and plan are established in accordance with the letter of intent and if the Secretary determines that such State standards are consistent with the air quality criteria and recommended control techniques issued pursuant to section 1857c–2 of this title; that the plan is consistent with the purposes of this chapter insofar as it assures achieving such standards of air quality within a reasonable time; and that a means of enforcement by State action, including authority comparable to that in subsection (k) of this section, is provided, such State standards and plan shall be the air quality standards applicable to such State. If the Secretary determines that any revised State standards and plan are consistent with the purposes of this chapter and this subsection, such standards and plan shall be the air quality standards applicable to such State.

(2) If a State does not (A) file a letter of intent or (B) establish air quality standards in accordance with paragraph (1) of this subsection with respect to any air quality control region or portion thereof and if the Secretary finds it necessary to achieve the purpose of this chapter, or the Governor of any State affected by air quality standards established pursuant to this subsection petitions for a revision in such standards, the Secretary may after reasonable notice and a conference of representatives of appropriate Federal departments and agencies, interstate agencies, States, municipalities, and industries involved, prepare regulations setting forth standards of air quality consistent with the air quality criteria and recommended control techniques issued pursuant to section 1857c–2 of this title to be applicable to such air quality control region or portions thereof. If, within six months from the date the Secretary publishes such regulations, the State has not adopted air quality standards found by the Secretary to be consistent with the purposes of this chapter, or a petition for public hearing has not been filed under paragraph (3) of this subsection, the Secretary shall promulgate such standards.

(3) If at any time prior to thirty days after standards have been promulgated under paragraph (2) of this subsection, the Governor of any State affected by such standards petitions the Secretary for a hearing, the Secretary shall call a public hearing for the purpose of receiving testimony from State and local pollution control agencies and other interested parties affected by the proposed standards, to be held in or near one or more of the places where the air quality standards will take effect, before a hearing board of five or more persons appointed by the Secretary. Each State which would be affected by such standards shall be given an opportunity to select a member of the hearing board. Each Federal department, agency, or instrumentality having a substantial interest in the subject matter as determined by the Secretary shall be given an opportunity to select one member of the hearing board and not less than a majority of the hearing board shall be persons other than officers or employees of the Department of Health, Education, and Welfare. The members of the board who are not officers or employees of the United States, while participating in the hearing conducted by such hearing board or otherwise engaged in the work of such hearing board, shall be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently. At least thirty days prior to the date of such hearing notice of such hearing shall

be published in the Federal Register and given to parties notified of the conference required in paragraph (2) of this subsection. On the basis of the evidence presented at such hearing, the hearing board shall within ninety days unless the Secretary determines a longer period is necessary, but in no event longer than one hundred and eighty days, make findings as to whether the standards published or promulgated by the Secretary should be approved or modified and transmit its findings to the Secretary. If the hearing board approves the standards as published or promulgated by the Secretary, the standards shall take effect on receipt by the Secretary of the hearing board's recommendations. If the hearing board recommends modifications in the standards as published or promulgated by the Secretary, the Secretary shall promulgate revised regulations setting forth standards of air quality in accordance with the hearing board's recommendations which will become effective immediately upon promulgation.

(4) Whenever, on the basis of surveys, studies and reports, the Secretary finds that the ambient air quality of any air quality control region or portion thereof is below the air quality standards established under this subsection, and he finds that such lowered air quality results from the failure of a State to take reasonable action to enforce such standards, the Secretary shall notify the affected State or States, persons contributing to the alleged violation, and other interested parties of the violation of such standards. If such failure does not cease within one hundred and eighty days from the date of the Secretary's notification, the Secretary—

(i) in the case of pollution of air which is endangering the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, may request the Attorney General to bring a suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

(ii) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law, or, at the request of the Governor of such State, shall request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

In any suit brought under the provisions of this subsection the court shall receive in evidence a transcript of the proceedings of the hearing provided for in this subsection, together with the recommendations of the hearing board and the recommendations and standards promulgated by the Secretary, and such additional evidence, including that relating to the alleged violation of the standards, as it deems necessary to complete review of the standards and to determination of all other issues relating to the alleged violation. The court, giving due consideration to the practicability and to the technological and economic feasibility of complying with such standards, shall have jurisdiction to enter such judgment and orders enforcing such judgment as the public interest and the equities of the case may require.

(5) In connection with any hearings under this section no witness or any other person shall be required to divulge trade secrets or secret processes.

(6) Nothing in this subsection shall prevent the application of this section to any case to which subsection (a) of this section would be otherwise applicable.

Conferences of air pollution agencies; participation of foreign countries; transcript of proceedings

(d) (1) (A) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Gover-

nor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Secretary shall, if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

(B) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Secretary shall, if such request refers to alleged air pollution which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate and if a municipality affected by such air pollution, or the municipality in which such pollution originates, has either made or concurred in such request, give formal notification thereof to the State air pollution control agency, to the air pollution control agencies of the municipality where such discharge or discharges originate, and of the municipality or municipalities alleged to be adversely affected thereby, and to any interstate air pollution control agency, whose jurisdictional area includes any such municipality and shall promptly call a conference of such agency or agencies, unless in the judgment of the Secretary, the effect of such pollution is not of such significance as to warrant exercise of Federal jurisdiction under this section.

(C) The Secretary may, after consultation with State officials of all affected States, also call such a conference whenever, on the basis of reports, surveys, or studies, he has reason to believe that any pollution referred to in subsection (a) of this section is occurring and is endangering the health and welfare of persons in a State other than that in which the discharge or discharges originate. The Secretary shall invite the cooperation of any municipal, State, or interstate air pollution control agencies having jurisdiction in the affected area on any surveys or studies forming the basis of conference action.

(D) Whenever the Secretary, upon receipt of reports, surveys, or studies from any duly constituted international agency, has reason to believe that any pollution referred to in subsection (a) of this section which endangers the health or welfare of persons in a foreign country is occurring, or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Secretary of Health, Education, and Welfare shall give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in the jurisdictional area of which such municipality is located, and shall call promptly a conference of such agency or agencies. The Secretary shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the conference, and the representative of such country shall, for the purpose of the conference and any further proceeding resulting from such conference, have all the rights of a State air pollution control agency. This subparagraph shall apply only to a foreign country which the Secretary determines has given the United States essentially the same

rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this subparagraph.

(2) The agencies called to attend such conference may bring such persons as they desire to the conference. The Secretary shall deliver to such agencies and make available to other interested parties, at least thirty days prior to any such conference, a Federal report with respect to the matters before the conference, including data and conclusions or findings (if any); and shall give at least thirty days' prior notice of the conference date to any such agency, and to the public by publication on at least three different days in a newspaper or newspapers of general circulation in the area. The chairman of the conference shall give interested parties an opportunity to present their views to the conference with respect to such Federal report, conclusions or findings (if any), and other pertinent information. The Secretary shall provide that a transcript be maintained of the proceedings of the conference and that a copy of such transcript be made available on request of any participant in the conference at the expense of such participant.

(3) Following this conference, the Secretary shall prepare and forward to all air pollution control agencies attending the conference a summary of conference discussions including (A) occurrence of air pollution subject to abatement under this chapter; (B) adequacy of measures taken toward abatement of the pollution; and (C) nature of delays, if any, being encountered in abating the pollution.

Recommendations of Secretary for remedial action by agencies; commencement of recommended action

(e) If the Secretary believes, upon the conclusion of the conference or thereafter, that effective progress toward abatement of such pollution is not being made and that the health or welfare of any persons is being endangered, he shall recommend to the appropriate State, interstate, or municipal air pollution control agency (or to all such agencies) that the necessary remedial action be taken. The Secretary shall allow at least six months from the date he makes such recommendations for the taking of such recommended action.

Hearings for failure to abate pollution; board members; findings and recommendations

(f) (1) If, at the conclusion of the period so allowed, such remedial action or other action which in the judgment of the Secretary is reasonably calculated to secure abatement of such pollution has not been taken, the Secretary shall call a public hearing, to be held in or near one or more of the places where the discharge or discharges causing or contributing to such pollution originated, before a hearing board of five or more persons appointed by the Secretary. Each State in which any discharge causing or contributing to such pollution originates and each State claiming to be adversely affected by such pollution shall be given an opportunity to select one member of such hearing board and each Federal department, agency, or instrumentality having a substantial interest in the subject matter as determined by the Secretary shall be given an opportunity to select one member of such hearing board, and one member shall be a representative of the appropriate interstate air pollution agency if one exists, and not less than a majority of such hearing board shall be persons other than officers or employees of the Department of Health, Education, and Welfare. At least three weeks' prior notice of such hearing shall be given to the State, interstate, and municipal air pollution control agencies called to attend such hearing and to the alleged polluter or polluters. All interested parties shall be given a reasonable opportunity to present evidence to such hearing board.

(2) On the basis of evidence presented at such hearing, the hearing board shall make findings as to whether pollution referred to in subsection (a) of this section is occurring and whether effective progress to-

ward abatement thereof is being made. If the hearing board finds such pollution is occurring and effective progress toward abatement thereof is not being made it shall make recommendations to the Secretary concerning the measures, if any, which it finds to be reasonable and suitable to secure abatement of such pollution.

(3) The Secretary shall send such findings and recommendations to the person or persons discharging any matter causing or contributing to such pollution; to air pollution control agencies of the State or States and of the municipality or municipalities where such discharge or discharges originate; and to any interstate air pollution control agency whose jurisdictional area includes any such municipality, together with a notice specifying a reasonable time (not less than six months) to secure abatement of such pollution.

Judicial proceedings to secure abatement of pollution

(g) If action reasonably calculated to secure abatement of the pollution within the time specified in the notice following the public hearing is not taken, the Secretary—

(1) in the case of pollution of air which is endangering the health or welfare of persons (A) in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, or (B) in a foreign country which has participated in a conference called under subparagraph (D) of subsection (d) of this section and in all proceedings under this section resulting from such conference, may request the Attorney General to bring a suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

(2) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law or, at the request of the Governor of such State, shall request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

Federal court proceedings; evidence; jurisdiction of court

(h) The court shall receive in evidence in any suit brought in a United States court under subsection (g) of this section a transcript of the proceedings before the board and a copy of the board's recommendations and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability of complying with such standards as may be applicable and to the physical and economic feasibility of securing abatement of any pollution proved, shall have jurisdiction to enter such judgment, and orders enforcing such judgment, as the public interest and the equities of the case may require.

Compensation and travel expenses for members of hearing board

(i) Members of any hearing board appointed pursuant to subsection (f) of this section who are not regular full-time officers or employees of the United States shall, while participating in the hearing conducted by such board or otherwise engaged on the work of such board, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (section 5703 of Title 5) for persons in the Government service employed intermittently.

Furnishing of data to Secretary by polluter; reports; failure to make required report; forfeitures

(j) (1) In connection with any conference called under this section, the Secretary is authorized to require any person whose activities result in the emission of air pollutants causing or contributing to air pollution to file with him, in such form as he may prescribe, a report, based on existing data, furnishing to the Secretary such information as may reasonably be required as to the character, kind, and quantity of pollutants discharged and the use of devices or other means to prevent or reduce the emission of pollutants by the person filing such a report. After a conference has been held with respect to any such pollution the Secretary shall require such reports from the person whose activities result in such pollution only to the extent recommended by such conference. Such report shall be made under oath or otherwise, as the Secretary may prescribe, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe, unless additional time be granted by the Secretary. No person shall be required in such report to divulge trade secrets or secret processes and all information reported shall be considered confidential for the purposes of section 1905 of Title 18.

(2) If any person required to file any report under this subsection shall fail to do so within the time fixed by the Secretary for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where such person has his principal office or in any district in which he does business: *Provided*, That the Secretary may upon application therefor remit or mitigate any forfeiture provided for under this subsection and he shall have authority to determine the facts upon all such applications.

(3) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.

Injunction in cases of imminent and substantial endangerment

(k) Notwithstanding any other provision of this section, the Secretary, upon receipt of evidence that a particular pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and finding that appropriate State or local authorities have not acted to abate such sources, may request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to immediately enjoin any contributor to the alleged pollution to stop the emission of contaminants causing such pollution or to take such other action as may be necessary.

July 14, 1955, c. 360, Title I, § 108, formerly § 5, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 396, amended and renumbered § 105, Oct. 20, 1965, Pub.L. 89–272, Title I, §§ 101(2), (3), 102, 79 Stat. 992, 995, amended and renumbered § 108, Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 491.

1967 Amendment. Subsec. (b). Pub.L. 90–148 substituted reference to subsecs. (c), (h), or (k) of this section for reference to subsec. (g) of this section.

Subsec. (c). Pub.L. 90–148 added subsec. (c). Former subsec. (c) redesignated as subsec. (d) and amended.

Subsec. (d). Pub.L. 90–148 redesignated former subsec. (c) as subsec. (d) and, in subsec. (d) as so redesignated, inserted into par. (2) provisions for the delivery prior to the conference of a Federal report to agencies and interested parties covering matters before the conference, raised from three weeks to thirty days the required notice of the conference, and added provisions for notice by newspapers, presentation of views on the Federal report, and transcript of proceedings. Former subsec. (d) redesignated as subsec. (e).

Subsec. (e). Pub.L. 90–148 redesignated former subsec. (d) as subsec. (e). Former subsec. (e) redesignated as subsec. (f) and amended.

Subsec. (f). Pub.L. 90–148 redesignated former subsec. (e) as subsec. (f) and, in subsec. (f) as so redesignated, inserted into par. (1) requirement that all interested parties be given a reasonable opportunity to present evidence to the

hearing board. Former subsec. (f) redesignated as subsec. (g) and amended.

Subsec. (g). Pub.L. 90–148 redesignated former subsec. (f) as subsec. (g) and, in subsec. (g) as redesignated, substituted reference to subsec. (d) of this section for reference to subsec. (c) of this section. Former subsec. (g) redesignated as subsec. (h) and amended.

Subsec. (h). Pub.L. 90–148 redesignated former subsec. (g) as subsec. (h) and, in subsec. (h) as so redesignated, substituted reference to subsec. (g) of this section for reference to subsec. (f) of this section. Former subsec. (h) redesignated as subsec. (i) and amended.

Subsec. (i). Pub.L. 90–148 redesignated former subsec. (h) as subsec. (i) and, in subsec. (i) as so redesignated, substituted reference to subsec. (f) of this section for reference to subsec. (e) of this section and raised the per diem maximum from $50 to $100. Former subsec. (i) redesignated as subsec. (j).

Subsec. (j). Pub.L. 90–148 redesignated former subsec. (i) as subsec. (j).

Subsec. (k). Pub.L. 90–148 added subsec. (k).

1965 Amendment. Subsec. (b). Pub.L. 89–272, § 101(2), substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter."

Subsec. (c) (1) (D). Pub.L. 89–272, § 102(a), added subpar. (D).

Subsec. (d) (3). Pub.L. 89–272, § 101(2), substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter."

Subsec. (f) (1). Pub.L. 89–272, § 102(b), inserted "(A)" and added cl. (B).

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub.L. 90–148, 1967 U.S.Code Cong. and Adm.News, p. 1938.

Index to Notes

Judicial review 1

1. Judicial review

Rulings made by hearing board at public hearing held under provisions of this chapter were not reviewable under sections 551 et seq. and 701 et seq. of Title 5 which authorizes judicial review of final agency action for which there is no other adequate remedy in a court, inasmuch as alleged polluter would be able to challenge rulings in suit by Attorney General on behalf of the United States to secure abatement of pollution, if such a suit should be requested by the Secretary of Health, Education and Welfare. Bishop Processing Co. v. Gardner, D.C.Md. 1967, 275 F.Supp. 780.

§ 1857d—1. Standards to achieve higher level of air quality

Nothing in this subchapter shall prevent a State, political subdivision, intermunicipal or interstate agency from adopting standards and plans to implement an air quality program which will achieve a higher level of ambient air quality than approved by the Secretary.

July 14, 1955, c. 360, Title I, § 109, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 497.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857e. Air Quality Advisory Board; advisory committees—Establishment of Board; membership; appointment; term

(a) (1) There is hereby established in the Department of Health, Education, and Welfare an Air Quality Advisory Board, composed of the Secretary or his designee, who shall be Chairman, and fifteen members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with air pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of air pollution prevention and control, as well as other individuals who are expert in this field.

(2) Each member appointed by the President shall hold office for a term of three years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of office of the members first taking office pursuant to this subsection shall expire as follows: five at the end of one year after the date of appointment, five at the end of two years after such date, and five at the end of three years after such date, as designated by the President at the time of appointment, and (C) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members shall be eligible for reappointment within one year after the end of his preceding term, unless such term was for less than three years.

Duties of Board

(b) The Board shall advise and consult with the Secretary on matters of policy relating to the activities and functions of the Secretary under this chapter and make such recommendations as it deems necessary to the President.

Clerical and technical assistance

(c) Such clerical and technical assistance as may be necessary to discharge the duties of the Board and such other advisory committees as hereinafter authorized shall be provided from the personnel of the Department of Health, Education, and Welfare.

Advisory committees

(d) In order to obtain assistance in the development and implementation of the purposes of this chapter including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Secretary shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics, or technology.

Compensation; travel expenses

(e) The members of the Board and other advisory committees appointed pursuant to this chapter who are not officers or employees of the United States while attending conferences or meetings of the Board or while otherwise serving at the request of the Secretary, shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently. July 14, 1955, c. 360, Title I, § 110, formerly § 6, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 399, renumbered § 106, Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(3), 79 Stat. 992, amended and renumbered § 110, Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 498.

1967 Amendment. Subsec. (a). Pub.L. 90–148 substituted provisions establishing in the Department of Health, Education, and Welfare and Air Quality Advisory Board and providing for the appointment and term of its members for provisions directing the Secretary to maintain liaison with manufacturers looking toward development of devices and fuels to reduce pollutants in automotive exhaust and to appoint a technical committee and call it together from time to time to evaluate progress and develop and recommend research programs.

Subsec. (b). Pub.L. 90–148 substituted provision setting out the duties of the Air Quality Advisory Board for provisions requiring the Secretary to make semi-annual reports to Congress on measures being taken toward the resolution of vehicle exhaust pollution problems.

Subsecs. (c)–(e). Pub.L. 90–148 added subsecs. (c)–(e).

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub.L. 90–148, 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857f. Air pollution from Federal facilities; cooperation by Federal agencies

(a) It is hereby declared to be the intent of Congress that any Federal department or agency having jurisdiction over any building, installation, or other property shall, to the extent practicable and consistent with the interests of the United States and within any available appropriations, cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency in preventing and controlling the pollution of the air in any area insofar as the discharge of any matter from or by such building, installation, or other property may cause or contribute to pollution of the air in such area.

(b) In order to control air pollution which may endanger the health or welfare of any persons, the Secretary may establish classes of potential pollution sources for which any Federal department or agency having jurisdiction over any building, installation, or other property shall, before discharging any matter into the air of the United States, obtain a permit from the Secretary for such discharge, such permits to be issued for a specified period of time to be determined by the Secretary and subject to revocation if the Secretary finds pollution is endangering the health and welfare of any persons. In connection with the issuance of such permits, there shall be submitted to the Secretary such plans, specifications, and other information as he deems relevant thereto and under such conditions as he may prescribe. The Secretary shall report each January to the Congress the status of such permits and compliance therewith.

July 14, 1955, c. 360, Title I, § 111, formerly § 7, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 399, renumbered § 107, Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(3), 79 Stat. 992, amended and renumbered § 111, Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 499.

1967 Amendment. Pub.L. 90–148 reenacted section without change.

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub.L. 90–148, 1967 U.S.Code Cong. and Adm.News, p. 1938.

EXECUTIVE ORDER NO. 11282

May 26, 1966, 31 F.R. 7663

PREVENTION, CONTROL, AND ABATEMENT BY FEDERAL ACTIVITIES

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Clean Air Act, as amended (42 U.S.C. 1857) [section 1857 of this title], it is ordered as follows:

Section 1. Policy. The heads of the departments, agencies, and establishments of the Executive Branch of the Government shall provide leadership in the nationwide effort to improve the quality of our air through the prevention, control, and abatement of air pollution from Federal Government activities in the United States. In order to achieve these objectives—

(1) Emissions to the atmosphere from Federal facilities and buildings shall not be permitted if such emissions endanger health or welfare, and emissions which are likely to be injurious or hazardous to people, animals, vegetation, or property shall be minimized. The procedures established in section 3 of this Order shall be followed in minimizing pollution from existing facilities and buildings.

(2) New Federal facilities and buildings shall be constructed so as to meet the objectives prescribed by this Order and the standards established pursuant to section 5 of this Order.

(3) The Secretary of Health, Education, and Welfare shall, in administering the Clean Air Act, as amended [this chapter], provide technical advice and assistance to the heads of other departments, agencies, and establishments in connection with their duties and responsibilities under this Order. The head of each department, agency, and establishment shall establish appropriate procedures for securing advice from, and consulting with, the Secretary of Health, Education, and Welfare.

(4) The head of each department, agency, and establishment shall ensure compliance with section 107(a) of the Clean Air Act, as amended (42 U.S.C. 1857f(a)) [subsec. (a) of this section], which declares it to be the intent of Congress that Federal departments and agencies shall, to the extent practicable and consistent with the interests of the United States and within available appropriations, cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency in preventing and controlling pollution of the air.

Sec. 2. Procedures for new Federal facilities and buildings. A request for funds to defray the cost of designing and constructing new facilities and buildings in the United States shall be included in the annual budget estimates of a department, agency, or establishment only if such request includes funds to defray the costs of such measures as may be necessary to assure that the new facility or building will meet the objectives prescribed by this Order and the standards established pursuant to section 5 of this Order. Air pollution control needs shall be considered in the initial stages of planning for each new installation.

Sec. 3. Procedures for existing Federal facilities and buildings. (a) In order to facilitate budgeting for corrective and preventive measures, the head of each department, agency, and establishment shall provide for an examination of all existing facilities and buildings under his jurisdiction in the United States and shall develop and present to the Director of the Bureau of the Budget, by July 1, 1967, a phased and orderly plan for installing such improvements as may be needed to prevent air pollution, or abate such air pollution as may exist, with respect to such buildings and facilities. Subsequent revisions needed to keep any such plan up to date shall be submitted to the Director of the Bureau of the Budget with the annual report required by paragraph (b) of this section. Future construction work at each such facility and the expected future use of the facility shall be considered in developing such a plan. Each such plan, and any revision therein, shall be developed in consultation with the Secretary of Health, Education, and Welfare in order to ensure that adoption of the measures proposed thereby will result in the prevention or abatement of air pollution

in conformity with the objectives prescribed by this Order and the standards prescribed pursuant to section 5 of this Order.

(b) The head of each department, agency, and establishment who has existing facilities and buildings under his jurisdiction in the United States shall present to the Director of the Bureau of the Budget, by July 1, 1968, and by the first of each fiscal year thereafter, an annual report describing progress of his department, agency, or establishment in accomplishing the objectives of its air pollution abatement plan.

Sec. 4. Objectives for Federal facilities and buildings. (a) Except for discharges of radioactive emissions which are regulated by the Atomic Energy Commission, Federal facilities and buildings shall conform to the air pollution standards prescribed by the State or community in which they are located. If State or local standards are not prescribed for a particular location, or if the State or local standards are less stringent than the standards established pursuant to this Order, the standards prescribed pursuant to section 5 of this Order shall be followed.

(b) The emission of flyash and other particulate matter shall be kept to a minimum.

(c) Emission of sulfur oxides shall be minimized to the extent practicable.

(d) Wherever appropriate, tall chimneys shall be installed in order to reduce the adverse effects of pollution. The determination of chimney height shall be based on air quality criteria, land use, and meteorological, topographical, aesthetic, and operating factors.

(e) Solid fuels and ash shall be stored and handled so as not to release to the atmosphere dust in significant quantities. Gasoline or any volatile petroleum distillate or organic liquid shall be stored and handled so as not to release to the atmosphere vapor emissions in significant quantities.

(f) In urban areas refuse shall not be burned in open fires and in rural areas it shall be disposed of in such a manner as to reasonably minimize pollution. Refuse shall not be left in dumps without being covered with inert matter within a reasonably short time. Whenever incinerators are used they shall be of such design as will minimize emission of pollutant dusts, fumes, or gases.

(g) Pollutant dusts, fumes, or gases (other than those for which provision is made above), shall not be discharged to the atmosphere in quantities which will endanger health or welfare.

(h) The head of each department, agency, and establishment shall, with respect to each installation in the United States under his jurisdiction, take, or cause to be taken, such action as may be necessary to ensure that discharges of radioactive emissions to the atmosphere are in accord with the rules, regulations, or requirements of the Atomic Energy Commission and the policies and guidance of the Federal Radiation Council as published in the Federal Register.

(i) In extraordinary cases where it may be required in the public interest, the Secretary of Health, Education, and Welfare may exempt any Federal facility or building from the objectives of paragraphs (a) through (g) of this section.

Sec. 5. Standards. (a) The Secretary of Health, Education, and Welfare shall prescribe standards to implement the objectives prescribed by paragraphs (a) through (g) of section 4 of this Order. Such standards may modify these objectives whenever the Secretary of Health, Education, and Welfare shall determine that such modifications are necessary in the public interest and will not significantly conflict with the intent of this Order. Prior to issuing any changes in such standards, the Secretary of Health, Education, and Welfare shall consult with appropriate Federal agencies and shall publish the proposed changes in the Federal Register thirty days prior to their issuance. All such standards prescribed by the Secretary shall be published in the Federal Register.

(b) The permits authorized by section 107(b) of the Clean Air Act, as amended (42 U.S.C. 1857f(b)) [subsec. (b) of this section], may be used to carry out the purposes of this Order as the Secretary of Health, Education, and Welfare may deem appropriate.

Sec. 6. Prior Executive Order superseded. Executive Order No. 10779 of August 20, 1958, is hereby superseded.

LYNDON B. JOHNSON

SUBCHAPTER II.—MOTOR VEHICLE EMISSION STANDARDS

§ 1857f—1. Standards governing emission of substances from vehicles or engines; establishment by regulation; vehicles and engines to which applicable; effective date of regulations

(a) The Secretary shall by regulation, giving appropriate consideration to technological feasibility and economic costs, prescribe as soon as practicable standards, applicable to the emission of any kind of substance, from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause or contribute to, or are likely to cause or to contribute to, air pollution which endangers the health or welfare of any persons, and such standards shall apply to such vehicles or engines whether they are designed as complete systems or incorporate other devices to prevent or control such pollution.

(b) Any regulations initially prescribed under this section, and amendments thereto, with respect to any class of new motor vehicles or new motor vehicle engines shall become effective on the effective date specified in the order promulgating such regulations which date shall be determined by the Secretary after consideration of the period reasonably necessary for industry compliance. July 14, 1955, c. 360, Title II, § 202, as

added Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(8), 79 Stat. 992, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 499.

1967 Amendment. Pub.L. 90–148 reenacted section without change.

Short Title. Section 201 of Act July 14, 1955, as added by section 101(8) of Pub.L. 89–272, and amended by section 2 of Pub.L. 90–148, provided that: "This title [this subchapter] may be cited as the 'National Emission Standards Act'." Prior to its amendment by Pub.L. 90–148, Title II of Act July 14, 1955, was known as the "Motor Vehicle Air Pollution Control Act".

Short Title. Section 201 of Act July 14, 1955, as added by section 101(8) of Pub. L. 89–272, provided that: "This title [this subchapter] may be cited as the 'Motor Vehicle Air Pollution Control Act'."

Legislative History: For legislative history and purpose of Pub.L. 89–272, see 1965 U.S.Code Cong. and Adm.News, p. 3608. See, also, Pub.L. 90–148, 1967 U.S. Code Cong. and Adm.News, p. 1938.

§ 1857f—2. Prohibited acts—Manufacture, sale, or importation of vehicles or engines not in conformity with regulations; failure to make reports or provide information; removal of devices installed in conformity with regulations

(a) The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the manufacture for sale, the sale, or the offering for sale, or the introduction or delivery for introduction into commerce, or the importation into the United States for sale or resale, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this subchapter which are applicable to such vehicle or engine unless it is in conformity with regulations prescribed under this subchapter (except as provided in subsection (b) of this section);

(2) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 1857f—6 of this title; or

(3) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser.

Authority of Secretary to make exemptions; refusal to admit vehicle or engine into United States; exemption of vehicles or engines intended for export

(b) (1) The Secretary may exempt any new motor vehicle or new motor vehicle engine, or class thereof, from subsection (a) of this section, upon such terms and conditions as he may find necessary to protect the public health or welfare, for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation by a manufacturer in violation of subsection (a) of this section shall be refused admission into the United States, but the Secretary of the Treasury and the Secretary of Health, Education, and Welfare may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this subchapter. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the

ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Secretary of Health, Education, and Welfare under this subchapter.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall not be subject to the provisions of subsection (a) of this section.

July 14, 1955, c. 360, Title II, § 203, as added Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(8), 79 Stat. 993, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 499.

1967 Amendment. Subsec. (a). Pub.L. 90–148 substituted "conformity with regulations prescribed under this subchapter" for "conformity with regulations prescribed under section 1857f–1 of this title" in par. (1).

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857f—3. Jurisdiction of district court to restrain violations; actions brought by or in name of United States; territorial scope of subpenas for witnesses

(a) The district courts of the United States shall have jurisdiction to restrain violations of paragraph (1), (2), or (3) of section 1857f—2(a) of this title.

(b) Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpenas for witnesses who are required to attend a district court in any district may run into any other district. July 14, 1955, c. 360, Title II, § 204, as added Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(8), 79 Stat. 994, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 500.

1967 Amendment. Pub.L. 90–148 reenacted section without change.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857f—4. Penalties for violations; separate offenses

Any person who violates paragraph (1), (2), or (3) of section 1857f—2(a) of this title shall be subject to a fine of not more than $1,000. Such violation with respect to section 1857f—2(a) (1) and 1857f—2(a) (3) of this title shall constitute a separate offense with respect to each new motor vehicle or new motor vehicle engine.

July 14, 1955, c. 360, Title II, § 205, as added Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(8), 79 Stat. 994, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 500.

1967 Amendment. Pub.L. 90–148 reenacted section without change.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857f—5. Testing of vehicles or engines to determine if in conformity with regulations; issuance of certificate of conformity; similarly constructed vehicles or engines deemed to be in conformity with regulations

(a) Upon application of the manufacturer, the Secretary shall test, or require to be tested, in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by such manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 1857f—1 of this title. If such vehicle or engine conforms to such regulations the Secretary shall issue a certificate of conformity, upon such terms, and for such period not less than one year, as he may prescribe.

(b) Any new motor vehicle or any motor vehicle engine sold by such manufacturer which is in all material respects substantially the same construction as the test vehicle or engine for which a certificate has been issued under subsection (a) of this section, shall for the purposes of this chapter be deemed to be in conformity with the regulations issued under section 1857f—1 of this title.

July 14, 1955, c. 360, Title II, § 206, as added Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(8), 79 Stat. 994, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 501.

1967 Amendment. Pub.L. 90–148 reenacted section without change.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857f—6. Records, reports and information required; access to and copying records; confidential nature of information obtained

(a) Every manufacturer shall establish and maintain such records, make such reports, and provide such information, as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this subchapter and regulations thereunder and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee at reasonable times, to have access to and copy such records.

(b) All information reported or otherwise obtained by the Secretary or his representative pursuant to subsection (a) of this section, which information contains or relates to a trade secret or other matters referred to in section 1905 of Title 18, shall be considered confidential for the purpose of such section 1905, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

July 14, 1955, c. 360, Title II, § 207, as added Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(8), 79 Stat. 994, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 501.

1967 Amendment. Pub.L. 90–148 reenacted section without change.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1934.

§ 1857f—6a. State standards

(a) No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this subchapter. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) The Secretary shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 1857f—1(a) of this title.

(c) Nothing in this subchapter shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

July 14, 1955, c. 306, Title III, § 208, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 501.

Codification. A prior section 208 of Act July 14, 1955, was renumbered section 212 by Pub.L. 90–148 and is set out as section 1857f–7 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857f—6b. Federal assistance in developing vehicle inspection programs

The Secretary is authorized to make grants to appropriate State air pollution control agencies in an amount up to two-thirds of the cost of developing meaningful uniform motor vehicle emission device inspection and emission testing programs except that (1) no grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program; and (2) no such grant shall be made unless the Secretary of Transportation has certified to the Secretary that such program is consistent with any highway safety program developed pursuant to section 402 of Title 23.

July 14, 1955, c. 306, Title II, § 209, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 502.

Codification. A prior section 209 of Act July 14, 1955, was set out as section 1857f–8 of this title and was repealed by Pub.L. 89–675, § 2(b), Oct. 15, 1966, 80 Stat. 954.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857f—6c. Fuel additives—Registration with Secretary

(a) The Secretary may by regulation designate any fuel or fuels (including fuels used for purposes other than motor vehicles), and after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel may deliver any such fuel for introduction into interstate commerce or to another person who, it can reasonably be expected, will deliver such fuel for such introduction unless the manufacturer of such fuel has provided the Secretary with the information required under subsection (b) (1) of this section and unless any additive contained in such fuel has been registered with the Secretary in accordance with subsection (b) (2) of this section.

Registration data; compliance

(b) For the purposes of this section the Secretary shall require (1) the manufacturer of such fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of such additive or additives in the fuel; and the purpose in the use of such additive; and (2) the manufacturer of any such additive to notify him as to the chemical composition of such additive or additives as indicated by compliance with clause (1) above, the recommended range of concentration of such additive, if any, the recommended purpose in the use of such additive, and to the extent such information is available or becomes available, the chemical structure of such additive or additives. Upon compliance with clauses (1) and (2), including assurances that any change in the above information will be provided to the Secretary, the Secretary shall register such fuel additive.

Trade secrets

(c) All information reported or otherwise obtained by the Secretary or his representative pursuant to subsection (b) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of Title 18, shall be considered confidential for the purpose of such section 1905, except that such information may be disclosed to other officers or employees of the United States concerned with carrying out this chapter or when relevant in any proceeding under this subchapter. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

Penalty

(d) Any person who violates subsection (a) of this section shall forfeit and pay to the United States a civil penalty of $1,000 for each and every

day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Secretary may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection, and he shall have authority to determine the facts upon all such applications.

Recovery of penalties to be prosecuted by United States Attorney

(e) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.

July 14, 1955, c. 360, Title III, § 210, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 502.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857f—6d. National emissions standards study

(a) The Secretary shall submit to the Congress, no later than two years after November 21, 1967, a comprehensive report on the need for and effect of national emission standards for stationary sources. Such report shall include: (A) information regarding identifiable health and welfare effects from single emission sources; (B) examples of specific plants, their location, and the contaminant or contaminants which, due to the amount or nature of emissions from such facilities, constitute a danger to public health or welfare; (C) an up-to-date list of those industries and the contaminant or contaminants which, in his opinion, should be subject to such national standards; (D) the relationship of such national emission standards to ambient air quality, including a comparison of situations wherein several plants emit the same contaminants in an air region with those in which only one such plant exists; (E) an analysis of the cost of applying such standards; and (F) such other information as may be appropriate.

(b) The Secretary shall conduct a full and complete investigation and study of the feasibility and practicability of controlling emissions from jet and piston aircraft engines and of establishing national emission standards with respect thereto, and report to Congress the results of such study and investigation within one year from November 21, 1967, together with his recommendations.

July 14, 1955, c. 360, Title II, § 211, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 503.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857f—7. Definitions

As used in this subchapter—

(1) The term "manufacturer" as used in sections 1857f–2, 1857f–5, 1857f–6, and 1857f–6a of this title means any person engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce.

(2) The term "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) The term "new motor vehicle" means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has been transferred to the ultimate purchaser.

(4) The term "dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term "ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

July 14, 1955, c. 360, Title II, § 212, formerly § 208, as added Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(8), 79 Stat. 994, renumbered and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 503.

1967 Amendment. Pub.L. 90–148 inserted "as used in sections 1857f–2, 1857f–5, 1857f–6, and 1857f–6a of this title" following "manufacturer" in par. (1).

Legislative History: For legislative history and purpose of Pub.L. 89–272, see 1965 U.S.Code Cong. and Adm.News, p. 3608. See, also, Pub.L. 90–148, 1967 U.S. Code Cong. and Adm.News, p. 1938.

§ 1857f—8. Repealed. Pub.L. 89–675, § 2(b), Oct. 15, 1966, 80 Stat. 954

Section, Act July 14, 1955, c. 360, Title II, § 209, as added Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(8), 79 Stat. 995, authorized appropriations for the fiscal years ending June 30, 1966, 1967, 1968, and 1969, to carry out sections 1857f–1 to 1857f–7. See section 1857*l* of this title.

SUBCHAPTER III.—GENERAL PROVISIONS

§ 1857g. Administration—Regulations; delegation of powers of Secretary

(a) The Secretary is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter. The Secretary may delegate to any officer or employee of the Department of Health, Education, and Welfare such of his powers and duties under this chapter, except the making of regulations, as he may deem necessary or expedient.

Detail of Public Health Service personnel to air pollution control agencies; payment of salaries and allowances

(b) Upon the request of an air pollution control agency, personnel of the Public Health Service may be detailed to such agency for the purpose of carrying out the provisions of this chapter. The provisions of section 215(d) of this title shall be applicable with respect to any personnel so detailed to the same extent as if such personnel had been detailed under section 215(b) of this title.

Payments under grants: installments; advances or reimbursement

(c) Payments under grants made under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Secretary.

July 14, 1955, c. 360, Title III, § 301, formerly § 8, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 400, renumbered Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 504.

1967 Amendment. Pub.L. 90–148 reenacted section without change.

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub.L. 90–148, 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857h. Definitions

When used in this chapter—

(a) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(b) The term "air pollution control agency" means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this chapter;

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency; or

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(c) The term "interstate air pollution control agency" means—

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) All language referring to adverse effects on welfare shall include but not be limited to injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to transportation.

July 14, 1955, c. 360, Title III, § 302, formerly § 9, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 400, renumbered Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 504.

1967 Amendment. Pub.L. 90–148 reenacted section without change.

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub.L. 90–148, 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857i. Application to other laws; nonduplication of appropriations

(a) Except as provided in subsection (b) of this section, this chapter shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Secretary or any other Federal officer, department, or agency.

(b) No appropriation shall be authorized or made under section 241, 243, or 246 of this title for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this chapter.

July 14, 1955, c. 360, Title III, § 303, formerly § 10, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 401, renumbered Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 505.

1967 Amendment. Subsec. (b). Pub.L. 90–148 substituted reference to section 246 of this title for reference to section 246(c) of this title.

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub.L. 90–148, 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857j. Records and audit

(a) Each recipient of assistance under this chapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of

such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

July 14, 1955, c. 360, Title III, § 304, formerly § 11, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 401, renumbered Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 505.

1967 Amendment. Pub.L. 90–148 reenacted section without change.

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub.L. 90–148, 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857j—1. Comprehensive economic cost studies

(a) In order to provide the basis for evaluating programs authorized by this chapter and the development of new programs and to furnish the Congress with the information necessary for authorization of appropriations by fiscal years beginning after June 30, 1969, the Secretary, in cooperation with State, interstate, and local air pollution control agencies, shall make a detailed estimate of the cost of carrying out the provisions of this chapter; a comprehensive study of the cost of program implementation by affected units of government; and a comprehensive study of the economic impact of air quality standards on the Nation's industries, communities, and other contributing sources of pollution, including an analysis of the national requirements for and the cost of controlling emissions to attain such standards of air quality as may be established pursuant to this chapter or applicable State law. The Secretary shall submit such detailed estimate and the results of such comprehensive study of cost for the five-year period beginning July 1, 1969, and the results of such other studies, to the Congress not later than January 10, 1969, and shall submit a reevaluation of such estimate and studies annually thereafter.

(b) The Secretary shall also make a complete investigation and study to determine (1) the need for additional trained State and local personnel to carry out programs assisted pursuant to this chapter and other programs for the same purpose as this chapter; (2) means of using existing Federal training programs to train such personnel; and (3) the need for additional trained personnel to develop, operate and maintain those pollution control facilities designed and installed to implement air quality standards. He shall report the results of such investigation and study to the President and the Congress not later than July 1, 1969.

July 14, 1955, c. 360, Title III, § 305, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 505.

Codification. A prior section 305 of Act July 14, 1955, was renumbered section 308 by Pub.L. 90–148 and is set out as section 1857k of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857j—2. Additional reports to Congress

Not later than six months after November 21, 1967, and not later than January 10 of each calendar year beginning after such date, the Secretary shall report to the Congress on measures taken toward implementing the purpose and intent of this chapter including, but not limited to, (1) the progress and problems associated with control of automotive exhaust emissions and the research efforts related thereto; (2) the development of air quality criteria and recommended emission control requirements; (3) the status of enforcement actions taken pursuant to this chapter; (4) the status of State ambient air standards setting, including such plans for

implementation and enforcement as have been developed; (5) the extent of development and expansion of air pollution monitoring systems; (6) progress and problems related to development of new and improved control techniques; (7) the development of quantitative and qualitative instrumentation to monitor emissions and air quality; (8) standards set or under consideration pursuant to subchapter II of this chapter; (9) the status of State, interstate, and local pollution control programs established pursuant to and assisted by this chapter; and (10) the reports and recommendations made by the President's Air Quality Advisory Board. July 14, 1955, c. 360, Title III, § 306, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 506.

Codification. A prior section 306 of Act July 14, 1955, was renumbered section 309 by Pub.L. 90–48 and is set out as section 1857*l* of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857j—3. Labor standards

The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276c of Title 40. July 14, 1955, c. 360, Title III, § 307, as added Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 506.

References in Text. The Davis-Bacon Act, referred to in text, is classified to sections 276a to 276a–5 of Title 40, Public Buildings, Property, and Works.

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

Codification. A prior section 307 of Act July 14, 1955, was renumbered section 310 by Pub.L. 90–148 and is set out as a note under section 1857 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–148, see 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857k. Separability of provisions

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.
July 14, 1955, c. 360, Title III, § 308, formerly § 12, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 401, renumbered § 305, Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(4), 79 Stat. 992, amended and renumbered § 308, Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 506.

1967 Amendment. Pub.L. 90–148 reenacted section without change.

Legislative History: For legislative history and purpose of Pub.L. 88–206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89–272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub.L. 90–148, 1967 U.S.Code Cong. and Adm.News, p. 1938.

§ 1857l. Appropriations

There are hereby authorized to be appropriated to carry out this chapter, other than sections 1857b(d) and 1857b–1 of this title, $74,000,000 for the fiscal year ending June 30, 1968, $95,000,000 for the fiscal year ending June 30, 1969, and $134,300,000 for the fiscal year ending June 30, 1970.
July 14, 1955, c. 360, Title III, § 309, formerly § 13, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 401, renumbered § 306, and amended Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub.L. 89–675, § 2(a), 80 Stat. 954, renumbered § 309, and amended Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 506.

1967 Amendment. Pub.L. 90–148 inserted provision excepting sections 1857b(d) and 1857b–1 of this title from the sections for which appropriations are authorized, struck out provision authorizing an appropriation of $46,000,000 for the fiscal year ending June 30, 1967, raised from $66,000,000 to $74,000,000 the

authorization for appropriation for fiscal year ending June 30, 1968, and from $74,000,000 to $95,000,000 the authorization for appropriation for fiscal year ending June 30, 1969, and added authorization for an appropriation of $134,300,000 for the fiscal year ending June 30, 1970.

1966 Amendment. Pub.L. 89-675 substituted provisions authorizing appropriations to carry out the chapter of $46,000,000 for the fiscal year ending June 30, 1967, $66,000,000 for the fiscal year ending June 30, 1968, and $74,000,000 for the fiscal year ending June 30, 1969 for provisions authorizing appropriations to carry out subchapter I of this chapter for fiscal years ending on June 30, 1965, 1966, and 1967.

1965 Amendment. Pub.L. 89-272 deleted former subsec. (a), which authorized an appropriation of not to exceed $5,000,000 for the fiscal year ending June 30, 1964 to carry out section 1857c of this title, redesignated former subsec. (b) as the entire section, and substituted "title I" for "this Act", which for purposes of codification has been changed to "subchapter I of this chapter."

Legislative History: For legislative history and purpose of Pub.L. 88-206, see 1963 U.S.Code Cong. and Adm.News, p. 1260. See, also, Pub.L. 89-272, 1965 U.S. Code Cong. and Adm.News, p. 3608; Pub. L. 89-675, 1966 U.S.Code Cong. and Adm. News, p. 3473; Pub.L. 90-148, 1967 U.S. Code Cong. and Adm.News, p. 1938.

CHAPTER 16.—NATIONAL SCIENCE FOUNDATION

Sec.
1864a. Deputy Director of the Foundation; Assistant Directors; appointment; compensation; powers and duties [New].

§ 1862. Functions—Initiation and support of studies and programs; scholarships; current register of scientific and technical personnel

(a) The Foundation is authorized and directed—

(1) to initiate and support basic scientific research and programs to strengthen scientific research potential in the mathematical, physical, medical, biological, engineering, social, and other sciences, by making contracts or other arrangements (including grants, loans, and other forms of assistance) to support such scientific activities and to appraise the impact of research upon industrial development and upon the general welfare;

(2) to award, as provided in section 1869 of this title, scholarships and graduate fellowships in the mathematical, physical, medical, biological, engineering, social, and other sciences;

(3) to foster the interchange of scientific information among scientists in the United States and foreign countries;

(4) to foster and support the development and use of computer and other scientific methods and technologies, primarily for research and education in the sciences;

(5) to evaluate the status and needs of the various sciences as evidenced by programs, projects, and studies undertaken by agencies of the Federal Government, by individuals, and by public and private research groups, employing by grant or contract such consulting services as it may deem necessary for the purpose of such evaluations; and to take into consideration the results of such evaluations in correlating the research and educational programs undertaken or supported by the Foundation with programs, projects, and studies undertaken by agencies of the Federal Government, by individuals, and by public and private research groups;

(6) to maintain a current register of scientific and technical personnel, and in other ways to provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal Government; and

(7) to initiate and maintain a program for the determination of the total amount of money for scientific research, including money allocated for the construction of the facilities wherein such research is conducted, received by each educational institution and appropriate nonprofit organization in the United States, by grant, contract, or other arrangement from agencies of the Federal Government, and to report annually thereon to the President and the Congress.

Contracts, grants, loans, etc., for scientific activities; financing of programs

(b) The Foundation is authorized to initiate and support specific scientific activities in connection with matters relating to international cooperaton or national security by making contracts or other arrangements (including grants, loans, and other forms of assistance) for the conduct of such scientific activities. Such activities when initiated or supported pursuant to requests made by the Secretary of State or the Secretary of Defense shall be financed solely from funds transferred to the Foundation by the requesting Secretary as provided in section 1873(g) of this title, and any such activities shall be unclassified and shall be identified by the Foundation as being undertaken at the request of the appropriate Secretary.

Scientific research programs at academic and other nonprofit institutions; applied scientific research programs by Presidential directive; employment of consulting services; coordination of activities

(c) In addition to the authority contained in subsections (a) and (b), the Foundation is authorized to initiate and support scientific research, including applied research, at academic and other nonprofit institutions. When so directed by the President, the Foundation is further authorized to support, through other appropriate organizations, applied scientific research relevant to national problems involving the public interest. In exercising the authority contained in this subsection, the Foundation may employ by grant or contract such consulting services as it deems necessary, and shall coordinate and correlate its activities with respect to any such problem with other agencies of the Federal Government undertaking similar programs in that field.

Promotion of basic research and education in the sciences

(d) The Board and the Director shall recommend and encourage the pursuit of national policies for the promotion of basic research and education in the sciences.

Balancing of research and educational activities in the sciences

(e) In exercising the authority and discharging the functions referred to in the foregoing subsections, it shall be one of the objectives of the Foundation to strengthen research and education in the sciences, including independent research by individuals, throughout the United States, and to avoid undue concentration of such research and education.

Annual report to the President and Congress

(f) The Foundation shall render an annual report to the President for submission on or before the 15th day of January of each year to the Congress, summarizing the activities of the Foundation and making such recommendations as it may deem appropriate. Such report shall include information as to the acquisition and disposition by the Foundation of any patents and patent rights.

As amended July 18, 1968, Pub.L. 90–407, § 1, 82 Stat. 360.

1968 Amendment. Subsec. (a) (1). Pub.L. 90–407 redesignated former subsec. (a) (2) as (a) (1), and, as to redesignated, added social sciences to the enumerated list of sciences. Former subsec. (a) (1) was redesignated as (d).

Subsec. (a) (2). Pub.L. 90–407 redesignated former subsec. (a) (4) as (a) (2), and, as so redesignated, added social sciences to the enumerated list of sciences. Former subsec. (a) (2) was redesignated as (a) (1).

Subsec. (a) (3). Pub.L. 90–407 redesignated former subsec. (a) (5) as (a) (3). Former subsec. (a) (3) was redesignated as (b).

Subsec. (a) (4). Pub.L. 90–407 added subsec. (a) (4). Former subsec. (a) (4) was redesignated as (a) (2).

Subsec. (a) (5). Pub.L. 90–407 redesignated former subsec. (a) (6) as (a) (5), and, as so redesignated, provided for the employment of consulting services, by grant or contract, to assist in the evaluation of the status and needs of the various sciences as evidenced by the programs and studies undertaken by agencies of the government, by individuals, and by public and private research groups, and provided for the consideration of the results of such evaluations in the correlation of the Foundation's programs with those undertaken by agencies of the government, as well as those undertaken by individuals and by public and private research groups. Former subsec. (a) (5) was redesignated as (a) (3).

Subsec. (a) (6). Pub.L. 90–407 redesignated former subsec. (a) (8) as (a) (6), and, as so redesignated, provided that the register of scientific and technical personnel shall be current, and authorized the Foundation to analyze and interpret the collected data on the availability of, and the current and projected need for, scientific and technical resources in the United States and to make such information available to other agencies of the government for policy formulation. Former subsec. (a) (6) was redesignated as (a) (5).

Subsec. (a) (7). Pub.L. 90–407 added subsec. (a) (7). Former subsec. (a) (7), which provided for the establishment of such special commissions as the Board may from time to time deem necessary for the purposes of this chapter, was eliminated.

Subsec. (a) (8). Pub.L. 90–407 redesignated former subsec. (a) (8) as (a) (6).

Subsec. (a) (9). Pub.L. 90–407 struck out subsec. (a) (9), which authorized the Foundation to initiate and support a program of study, research, and evaluation in the field of weather modification, with particular attention to areas experiencing floods, drought, etc., and to report annually to the President and the Congress thereon.

Subsec. (b). Pub.L. 90–407 redesignated former subsec. (a) (3) as (b), and, as so redesignated, substituted provisions authorizing the Foundation to initiate and support specific scientific activities in matters related to international cooperation or national security for provisions authorizing the Foundation to initiate and support only scientific research activities, only in matters related to national defense and only when requested to do so by the Secretary of Defense, and added provisions specifying the manner of financing such scientific activities. Former subsec. (b) was redesignated as (e).

Subsec. (c). Pub.L. 90–407 added subsec. (c). Former subsec. (c) was redesignated as (f).

Subsec. (d). Pub.L. 90–407 redesignated former subsec. (a) (1) as (d), and, as so redesignated, substituted provisions authorizing the Board and the Director to recommend and encourage national policies promoting basic research and education in the sciences for provisions authorizing and directing the Foundation to develop and encourage such policies.

Subsec. (e). Pub.L. 90–407 redesignated former subsec. (b) as (e), and, as so redesignated, substituted "the foregoing subsections" for "subsection (a) of this section", "strengthen research" for "strengthen basic research", and struck out the reference to the territories and possessions of the United States.

Subsec. (f). Pub.L. 90–407 redesignated former subsec. (c) as (f), and, as so redesignated, struck out the provision requiring the report to include the minority views and recommendations if any, of members of the Board.

Continuation of Authorization for Weather Modification Programs; Repeal. Section 11(1) of Pub.L. 90–407 provided in part that the authorization for the programs initiated under former subsec. (a) (9) of this section shall continue in effect until Sept. 1, 1968 for the purposes of section 1872a of this title.

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Section 16 of Pub.L. 90–407 provided that: "Except as otherwise specifically provided therein, the amendments made by this Act [which enacted section 1864a of this title, amended this section, sections 1863–1866, 1868–1870, 1872–1875, and 1877 of this title, sections 5313, 5314, and 5316 of Title 5, Government Organization and Employees, repealed sections 1867 and 1872a of this title, and enacted material set out as a note under section 5313 of Title 5] are intended to continue in effect under the National Science Foundation Act of 1950 [this chapter] the existing offices, procedures, and organization of the National Science Foundation as provided by such Act [this chapter], part II of Reorganization Plan Numbered 2 of 1962, and Reorganization Plan Numbered 5 of 1965 [set out in Appendix to Title 5]. From and after the date of the enactment of this Act [July 18, 1968], part II of Reorganization Plan Numbered 2 of 1962, and Reorganization Plan Numbered 5 of 1965, shall be of no force or effect; but nothing in this Act shall alter or affect any transfers of functions made by part I of such Reorganization Plan Numbered 2 of 1962."

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

EXECUTIVE ORDER NO. 10807

Mar. 13, 1959, 24 F.R. 1897, as amended by Ex.Ord.No.11381, Nov. 8, 1967, 32 F.R. 15629

FEDERAL COUNCIL FOR SCIENCE AND TECHNOLOGY

Section 1. Establishment of Council. (a) There is hereby established the Federal Council for Science and Technology (hereinafter referred to as the Council).

(b) The Council shall be composed of the Special Assistant to the President for Science and Technology and one representative of each of the following: Department of Agriculture, Department of Commerce, Department of Defense, Department of Health, Education, and Welfare, Department of Housing and Urban Development, Department of the Interior, Department of State, Department of Transportation, Atomic Energy Commission, National Aeronautics and Space Administration, and National Science Foundation. Each such representative shall be an official of policy rank designated by the head of the Federal agency concerned, and, in the case of the Atomic Energy Commission, shall be its Chairman or another member of the Commission designated by the Chairman of the Commission. A representative of the Director of the Bureau of the Budget designated by the Director may attend meetings of the Council as an observer.

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§ 1863. National Science Board—Composition; appointment; establishment of policies of the Foundation

(a) The Board shall consist of twenty-four members to be appointed by the President, by and with the advice and consent of the Senate, and of the Director ex officio. In addition to any powers and functions other-

wise granted to it by this chapter, the Board shall establish the policies of the Foundation.

Executive Committee; delegation of powers and functions

(b) The Board shall have an Executive Committee as provided in section 1865 of this title, and may delegate to it or to the Director or both such of the powers and functions granted to the Board by this chapter as it deems appropriate.

Qualifications for Board membership; recommendations

(c) The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific leaders in all areas of the Nation. The President is requested, in the making of nominations of persons for appointment as members, to give due consideration to any recommendations for nomination which may be submitted to him by the National Academy of Sciences, the National Association of State Universities and Land Grant Colleges, the Association of American Universities, the Association of American Colleges, the Association of State Colleges and Universities, or by other scientific or educational organizations.

Term of office; reappointment

(d) The term of office of each member of the Board shall be six years; except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Any person, other than the Director, who has been a member of the Board for twelve consecutive years shall thereafter be ineligible for appointment during the two-year period following the expiration of such twelfth year.

Meetings; quorum; notice

(e) The Board shall meet annually on the third Monday in May unless, prior to May 10 in any year, the Chairman has set the annual meeting for a day in May other than the third Monday, and at such other times as the Chairman may determine, but he shall also call a meeting whenever one-third of the members so request in writing. A majority of the members of the Board shall constitute a quorum. Each member shall be given notice, by registered mail or certified mail mailed to his last known address of record not less than fifteen days prior to any meeting, of the call of such meeting.

Election of Chairman and Vice Chairman; vacancy

(f) The election of the Chairman and Vice Chairman of the Board shall take place at each annual meeting occurring in an even-numbered year. The Vice Chairman shall perform the duties of the Chairman in his absence. In case a vacancy occurs in the chairmanship or vice chairmanship, the Board shall elect a member to fill such vacancy.

Annual report to the President and Congress; recommendations

(g) The Board shall render an annual report to the President, for submission on or before the 31st day of January of each year to the Congress, on the status and health of science and its various disciplines. Such report shall include an assessment of such matters as national scientific resources and trained manpower, progress in selected areas of basic scientific research, and an indication of those aspects of such progress which might be applied to the needs of American society. The report may include such recommendations as the Board may deem timely and appropriate.

Appointment and assignment of staff; compensation; security requirements

(h) The Board may, with the concurrence of a majority of its members, permit the appointment of a staff consisting of not more than five professional staff members and such clerical staff members as may be necessary. Such staff shall be appointed by the Director and assigned at the direction of the Board. The professional members of such staff may be appointed without regard to the provisions of Title 5, governing appointments in the competitive service, and the provisions of chapter 51 of Title 5 relating to classification, and compensated at a rate not exceeding the appropriate rate provided for individuals in grade GS–15 of the General Schedule under section 5332 of Title 5, as may be necessary to provide for the performance of such duties as may be prescribed by the Board in connection with the exercise of its powers and functions under this chapter. Each appointment under this subsection shall be subject to the same security requirements as those required for personnel of the Foundation appointed under section 1873(a) of this title.

Special commissions

(i) The Board is authorized to establish such special commissions as it may from time to time deem necessary for the purposes of this chapter.

Committees; survey and advisory functions

(j) The Board is also authorized to appoint from among its members such committees as it deems necessary, and to assign to committees so appointed such survey and advisory functions as the Board deems appropriate to assist it in exercising its powers and functions under this chapter. As amended July 18, 1968, Pub.L. 90–407, § 2, 82 Stat. 361.

1968 Amendment. Subsec. (a). Pub.L. 90–407 substituted provisions which authorized the Board to establish the policies of the Foundation, in addition to any powers and functions otherwise granted to it by this chapter, for provisions which authorized the Board, except as otherwise provided by this chapter, to exercise the authority granted to the Foundation by this chapter. Provisions of this subsection, which enumerated the qualifications of persons nominated for appointment to the Board and provided for the specified organizations to make recommendations to the President of individuals qualified for nomination, were designated as subsec. (c).

Subsec. (b). Pub.L. 90–407 added subsec. (b). Former subsec. (b) was redesignated as (d).

Subsec. (c). Pub.L. 90–407 redesignated provisions of former subsec. (a) as (c), and, as so redesignated, added social science and research management to the enumerated fields of eminence, and substituted "the National Association of State Universities and Land Grant Colleges, the Association of American Universities, the Association of American Colleges, the Association of State Colleges and Universities" for "the Association of Land Grant Colleges and Universities, the National Association of State Universities, the Association of American Colleges". Former subsec. (c), which provided that "The President shall call the first meeting of the Board, at which the first order of business shall be the election of a chairman and a vice chairman", was eliminated as executed.

Subsec. (d). Pub.L. 90–407 redesignated former subsec. (b) as (d), and, as so redesignated, substituted "term of office of each member" for "term of office of each voting member", struck out "the terms of office of the members first taking office after May 10, 1950, shall expire, as designated by the President at the time of appointment, eight at the end of two years, eight at the end of four years, and eight at the end of six years, after May, 10, 1950", and provided for the exemption of the Director from the prohibition against reappointment within two years following twelve consecutive years of Board membership. Former subsec. (d) was redesignated as (e).

Subsec. (e). Pub.L. 90–407 redesignated former subsec. (d) as (e), and, as so redesignated, substituted "A majority of the members of the Board shall constitute a quorum" for "A majority of the voting members of the Board shall constitute a quorum". Former subsec. (e) was redesignated as (f).

Subsec. (f). Pub.L. 90–407 redesignated former subsec. (e) as (f), and, as so redesignated, substituted provisions that the election of the Chairman and Vice Chairman take place at each annual meeting occurring in an even-numbered year for provisions that their election take place at the first meeting of the National Science Board following the enactment of Pub.L. 86–232, and that thereafter such election take place at the second annual meeting occurring after each such election.

Subsecs. (g)–(j). Pub.L. 90–407 added subsecs. (g)–(j).

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1864. Director of Foundation—Appointment; compensation; term of office

(a) The Director of the Foundation (referred to in this chapter as the "Director") shall be appointed by the President, by and with the advice and consent of the Senate. Before any person is appointed as Director, the President shall afford the Board an opportunity to make recommendations to him with respect to such appointment. The Director shall receive basic pay at the rate provided for level II of the Executive Schedule under section 5313 of Title 5, and shall serve for a term of six years unless sooner removed by the President.

Exercise of authority of Foundation; action as final and binding upon the Foundation

(b) Except as otherwise specifically provided in this chapter (1) the Director shall exercise all of the authority granted to the Foundation by this chapter (including any powers and functions which may be delegated to him by the Board), and (2) all actions taken by the Director pursuant to the provisions of this chapter (or pursuant to the terms of a delegation from the Board) shall be final and binding upon the Foundation.

Delegation and redelegation of functions

(c) The Director may from time to time make such provisions as he deems appropriate authorizing the performance by any other officer, agency, or employee of the Foundation of any of his functions under this chapter, including functions delegated to him by the Board; except that the Director may not redelegate policymaking functions delegated to him by the Board.

Formulation of programs

(d) The formulation of programs in conformance with the policies of the Foundation shall be carried out by the Director in consultation with the Board.

Authority to contract, grant, etc.; limitations and conditions; waiver

(e) The Director shall not make any contract, grant, or other arrangement pursuant to section 1870(c) of this title without the prior approval of the Board, except that a grant, contract, or other arrangement involving a total commitment of less than $2,000,000, or less than $500,000 in any one year, or a commitment of such lesser amount or amounts and subject to such other conditions as the Board in its discretion may from time to time determine to be appropriate and publish in the Federal Register, may be made if such action is taken pursuant to the terms and conditions set forth by the Board, and if each such action is reported to the Board at the Board meeting next following such action.

Status; power to vote and hold office

(f) The Director, in his capacity as ex officio member of the Board, shall, except with respect to compensation and tenure, be coordinate with the other members of the Board. He shall be a voting member of the Board and shall be eligible for election by the Board as Chairman or Vice Chairman of the Board.

As amended July 18, 1968, Pub.L. 90–407, § 3, 82 Stat. 362.

1968 Amendment. Subsec. (a). Pub.L. 90–407 added the provision prescribing the annual rate of compensation of the Director, and struck out the provisions authorizing the Director to serve as a nonvoting ex officio member of the Board and as the chief executive officer of the Foundation.

Subsec. (b). Pub.L. 90–407 substituted provisions authorizing the Director, except as otherwise provided, to exercise all of the authority granted to the Foundation by this chapter and to take action final and binding upon the Foundation for provisions authorizing the Director, in addition to the powers and duties specifically vested in him by this chapter, to exercise the powers granted by sections 1869 or 1870(c) of this title and such other powers and duties delegated by the Board to him, and the proviso that no action taken by the Director pursuant to section 1869 or 1870(c) shall be final unless in each instance the Board has reviewed and approved the action proposed to be taken, or such action is taken pursuant to the terms of a delegation of authority from the Board or the Executive Committee to the Director.

Subsecs. (c)–(f). Pub.L. 90–407 added subsecs. (c)–(f).

Transfer of Functions. Authority of Director of the National Science Foundation, from time to time, to make appropriate provisions authorizing the performance by any other officer, or by any agency or employee, of the National Science Foundation of any of his functions (including functions delegated to him by the National Science Board), see Reorg. Plan No. 5 of 1965, eff. July 27, 1965, 30 F.R. 9355, 79 Stat. 1323, set out as a note under section 1867 of this title.

Effective Date of 1968 Amendment. Amendment by Pub.L. 90–407, insofar as related to rates of basic pay, effective on the first day of the first calendar month which begins on or after July 18, 1968, see section 15(a) (4), set out as a note under section 5313 of Title 5, Government Organization and Employees.

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1864a. Deputy Director of the Foundation; Assistant Directors; appointment; compensation; powers and duties

(a) There shall be a Deputy Director of the Foundation (referred to in this chapter as the "Deputy Director"), who shall be appointed by the President, by and with the advice and consent of the Senate. Before any person is appointed as Deputy Director, the President shall afford the Board and the Director an opportunity to make recommendations to him with respect to such appointment. The Deputy Director shall receive basic pay at the rate provided for level III of the Executive Schedule under section 5314 of Title 5, and shall perform such duties and exercise such powers as the Director may prescribe. The Deputy Director shall act for, and exercise the powers of, the Director during the absence or disability of the Director or in the event of a vacancy in the office of Director.

(b) There shall be four Assistant Directors of the Foundation (each referred to in this chapter as an "Assistant Director"), who shall be appointed by the President, by and with the advice and consent of the Senate. Before any person is appointed as an Assistant Director, the President shall afford the Board and the Director an opportunity to make recommendations to him with respect to such appointment. Each Assistant Director shall receive basic pay at the rate provided for level V of the Executive Schedule under section 5316 of Title 5, and shall perform such duties and exercise such powers as the Director may prescribe.

May 10, 1950, c. 171, § 6, as added July 18, 1968, Pub.L. 90–407, § 4, 82 Stat. 363.

Effective Date. Enactment of section by Pub.L. 90–407, insofar as related to rates of basic pay, effective on the first day of the first calendar month which begins on or after July 18, 1968, see section 15(a) (4), set out as a note under section 5313 of Title 5, Government Organization and Employees.

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1865. Executive Committee—Composition; powers and functions; membership; chairman

(a) There shall be an Executive Committee of the Board (referred to in this chapter as the "Executive Committee"), which shall be composed of five members and shall exercise such powers and functions as may be delegated to it by the Board. Four of the members shall be elected as provided in subsection (b), and the Director ex officio shall be the fifth member and the chairman of the Executive Committee.

Election to membership; term of office; eligibility for reelection

(b) At each of its annual meetings the Board shall elect two of its members as members of the Executive Committee, and the Executive Committee members so elected shall hold office for two years from the date of their election. Any person, other than the Director, who has been a member of the Executive Committee for six consecutive years shall thereafter be ineligible for service as a member thereof during the two-year period fol-

lowing the expiration of such sixth year. For the purposes of this subsection, the period between any two consecutive annual meetings of the Board shall be deemed to be one year.

Term of vacancy appointment

(c) Any person elected as a member of the Executive Committee to fill a vacancy occurring prior to the expiration of the term for which his predecessor was elected shall be elected for the remainder of such term.

Reports; minority views

(d) The Executive Committee shall render an annual report to the Board, and such other reports as it may deem necessary, summarizing its activities and making such recommendations as it may deem appropriate. Minority views and recommendations, if any, of members of the Executive Committee shall be included in such reports.

May 10, 1950, c. 171, § 7, formerly § 6, 64 Stat. 151, as amended Sept. 8, 1959, Pub.L. 86–232, § 4, 73 Stat. 467, renumbered and amended July 18, 1968, Pub.L. 90–407, §§ 4, 5, 82 Stat. 363, 364.

1968 Amendment. Subsec. (a). Pub.L. 90–407 made mandatory the organization of the Executive Committee, struck out the prohibition that the Board may not assign to the Executive Committee the function of establishing policies, and added the provisions setting forth the number of members, their manner of election, and the status of the Director.

Subsec. (b). Pub.L. 90–407 substituted provisions that the Board elect two members as members of the Executive Committee at its annual meeting, with the period between any two consecutive annual meetings to be deemed one year, for provisions covering the composition of the Executive Committee, setting forth a special one year term of office for four members first elected after May 10, 1950, and directing that the membership of the Committee represent diverse interests and areas. Provisions of former subsecs. (b) (2) (A) and (b) (5) were redesignated as subsecs. (c) and (d), respectively.

Subsec. (c). Pub.L. 90–407 redesignated former subsec. (b) (2) (A) as (c), and, as so redesignated, substituted "Any person elected as a member of the Executive Committee" for "any member elected". Former subsec. (c), authorizing the Board to appoint such additional committees as it deems necessary, and to delegate to such committees survey and advisory functions as it deems appropriate, was eliminated.

Subsec. (d). Pub.L. 90–407 redesignated former subsec. (b) (5) as (d), and, as so redesignated, substituted "The Executive Committee" for "Such Committee".

Continuation of Existing Offices, Procedures, and Organization of the National Scienco Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1866. Divisions within Foundation

There shall be within the Foundation such Divisions as the Director, in consultation with the Board, may from time to time determine.

May 10, 1950, c. 171, § 8, formerly § 7, 64 Stat. 152, renumbered and amended July 18, 1968, Pub.L. 90–407, §§ 4, 6, 82 Stat. 363, 364.

1968 Amendment. Pub.L. 90–407 substituted provisions that there be within the Foundation such divisions as the Director, in consultation with the Board, may from time to time determine for provisions that, unless otherwise provided by the Board, there be within the Foundation a Division of Medical Research, a Division of Mathematical, Physical, and Engineering Sciences, a Division of Biological Sciences, a Division of Scientific Personnel and Education, and such other divisions as the Board deems necessary.

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1867. Repealed. Pub.L. 90–407, § 4, July 18, 1968, 82 Stat. 363

Section, Act May 10, 1950, c. 171, § 8, 64 Stat. 152, authorized a committee for each division of the Foundation, and provided for the composition, terms of office, chairmanship, rules of procedure, and powers and duties of each divisional committee.

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

§ 1868. Special commissions; composition; chairman and vice chairman; duties

(a) Each special commission established pursuant to section 1863(i) of this title shall consist of eleven members appointed by the Board, six of whom shall be eminent scientists and five of whom shall be persons

other than scientists. Each special commission shall choose its own chairman and vice chairman.

As amended July 18, 1968, Pub.L. 90–407, § 7, 82 Stat. 364.

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1968 Amendment. Subsec. (a). Pub.L. 90–407 substituted "section 1863(i) of this title" for "section 1862(a) (7) of this title".

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1869. Scholarships and graduate fellowships

The Foundation is authorized to award, within the limits of funds made available specifically for such purpose pursuant to section 1875 of this title, scholarships and graduate fellowships for scientific study or scientific work in the mathematical, physical, medical, biological, engineering, social, and other sciences at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time. Persons shall be selected for such scholarships and fellowships from among citizens or nationals of the United States, and such selections shall be made solely on the basis of ability; but in any case in which two or more applicants for scholarships or fellowships, as the case may be, are deemed by the Foundation to be possessed of substantially equal ability, and there are not sufficient scholarships or fellowships, as the case may be, available to grant one to each of such applicants, the available scholarship or scholarships or fellowship or fellowships shall be awarded to the applicants in such manner as will tend to result in a wide distribution of scholarships and fellowships throughout the United States. Nothing contained in this chapter shall prohibit the Foundation from refusing or revoking a scholarship or fellowship award, in whole or in part, in the case of any applicant or recipient, if the Board is of the opinion that such award is not in the best interests of the United States.

As amended July 18, 1968, Pub.L. 90–407, § 8, 82 Stat. 364.

1968 Amendment. Pub.L. 90–407 added social sciences to the enumerated list of sciences, and substituted "throughout the United States" for "among the States, Territories, possessions, and the District of Columbia".

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1870. General authority of Foundation

The Foundation shall have the authority, within the limits of available appropriations, to do all things necessary to carry out the provisions of this chapter, including, but without being limited thereto, the authority—

* * * * * * * * * *

(c) to enter into contracts or other arrangements, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such scientific activities as the Foundation deems necessary to carry out the purposes of this chapter, and, at the request of the Secretary of State or Secretary of Defense, specific scientific activities in connection with matters relating to the international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 5 of Title 41;

(d) to make advance, progress, and other payments which relate to scientific activities without regard to the provisions of section 529 of Title 31;

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(h) to accept and utilize the services of voluntary and uncompensated personnel and to provide transportation and subsistence as authorized by section 5703 of Title 5, for persons serving without compensation;

(i) to prescribe, with the approval of the Comptroller General of the United States, the extent to which vouchers for funds expended under contracts for scientific research shall be subject to itemization or substantiation prior to payment, without regard to the limitations of other laws relating to the expenditure of public funds and accounting therefor; and

(j) to arrange with and reimburse the heads of other Federal agencies for the performance of any activity which the Foundation is authorized to conduct.

As amended July 18, 1968, Pub.L. 90–407, § 9, 82 Stat. 365.

1968 Amendment. Subsec. (c). Pub.L. 90–407, § 9(a), substituted "scientific activities" for "basic scientific research activities" and "scientific research activities", "international cooperation or national security" for "national defense", and added "Secretary of State" following "at the request of the".

Subsec. (d). Pub.L. 90–407, § 9(b), substituted "activities" for "research".

Subsec. (h). Pub.L. 90–407, § 9(c), substituted "section 5703 of Title 5" for "section 73b–2 of Title 5".

Subsec. (j). Pub.L. 90–407, § 9(d), added subsec. (j).

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1872. International cooperation and coordination with foreign policy

(a) The Foundation is authorized to cooperate in any international scientific activities consistent with the purposes of this chapter and to expend for such international scientific activities such sums within the limit of appropriated funds as the Foundation may deem desirable. The Director may defray the expenses of representatives of Government agencies and other organizations and of individual scientists to accredited international scientific congresses and meetings whenever he deem [1] it necessary in the promotion of the objectives of this chapter. In this connection, with the approval of the Secretary of State, the Foundation may undertake programs granting fellowships to, or making other similar arrangements with, foreign nationals for scientific study or scientific work in the United States without regard to section 1869 of this title or the affidavit of allegiance to the United States required by section 1874(d) (2) of this title.

As amended July 18, 1968, Pub.L. 90–407, § 10, 82 Stat. 365.

* * * * * * * * * *

[1] So in original.

1968 Amendment. Subsec. (a). Pub.L. 90–407 struck out ", with the approval of the Board," following "The Director", and substituted "section 15(d) (2) of this Act" for "section 16(d) (2) of this Act", which resulted in no substantive change in the text of the present section, since, for purposes of classification, provision was translated as "section 1874(d) (2) of this title" by prior amendment.

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1872a. Repealed. Pub.L. 90–407, § 11(1), July 18, 1968, 82 Stat. 365

Section, Act May 10, 1950, c. 171, § 14, as added July 11, 1958, Pub.L. 85–510, § 2, 72 Stat. 353, authorized the Foundation, in carrying out a program of study, research, and evaluation in the field of weather modification, to consult with meteorologists and scientists, make contracts and grants, accept gifts, loan property, conduct hearings, and subpoena books and records.

Effective Date of Repeal. Section 11(1) of Pub.L. 90–407 provided in part that the repeal of section 14 of the National Science Foundation Act of 1950 [this section] was effective September 1, 1968, and that provisions authorizing the Foundation to initiate and support programs in the field of weather modification should remain in effect until September 1, 1968 for purposes of this section.

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

§ 1873. Employment of personnel—Appointment; compensation; application of civil service laws; technical and professional personnel; members of special commissions

(a) The Director shall, in accordance with such policies as the Board shall from time to time prescribe, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter. Except as provided in section 1863(h) of this title, such appointments shall be made and such compensation shall be fixed in accordance with the provisions of Title 5, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of Title 5 relating to classification and General Schedule pay rates: *Provided,* That the Director may, in accordance with such policies as the Board shall from time to time prescribe, employ such technical and professional personnel and fix their compensation, without regard to such provisions, as he may deem necessary for the discharge of the responsibilities of the Foundation under this chapter. The members of the special commissions shall be appointed without regard to the provisions of Title 5, governing appointments in the competitive service.

Outside employment and activities

(b) Neither the Director, the Deputy Director, nor any Assistant Director shall engage in any other business, vocation, or employment while serving in such position; nor shall the Director, the Deputy Director, or any Assistant Director, except with the approval of the Board, hold any office in, or act in any capacity for, any organization, agency, or institution with which the Foundation makes any grant, contract, or other arrangement under this chapter.

Operation of laboratories and pilot plants

(c) The Foundation shall not, itself, operate any laboratories or pilot plants.

Compensation of members of Board and special commissions

(d) The members of the Board and the members of each special commission shall receive compensation at the rate of $100 for each day engaged in the business of the Foundation pursuant to authorization of the Foundation and shall be allowed travel expenses as authorized by section 5703 of Title 5.

Government officers as members of specinl commissions; compensation

(e) Persons holding other offices in the executive branch of the Federal Government may serve as members of special commissions, but they shall not receive remuneration for their services as such members during any period for which they receive compensation for their services in such other offices.

Utilization of appropriations in making contracts

(f) In making contracts or other arrangements for scientific research, the Foundation shall utilize appropriations available therefor in such manner as will in its discretion best realize the objectives of (1) having the work performed by organizations, agencies, and institutions, or individuals in the United States or foreign countries, including Government agencies of the United States and of foreign countries, qualified by training and experience to achieve the results desired, (2) strengthening the research staff of organizations, particularly nonprofit organizations, in the United States, (3) aiding institutions, agencies, or organizations which, if aided, will advance scientific research, and (4) encouraging independent scientific research by individuals.

Transfer of research funds of other Government departments or agencies

(g) Funds available to any department or agency of the Government for scientific or technical research, or the provision of facilities therefor, shall be available for transfer, with the approval of the head of the department or agency involved, in whole or in part, to the Foundation for such use as is consistent with the purposes for which such funds were

provided, and funds so transferred shall be expendable by the Foundation for the purposes for which the transfer was made.

Definition

(h) For purposes of this chapter, the term "United States" when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

May 10, 1950, c. 171, § 14, 64 Stat. 154, renumbered § 15, July 11, 1958, Pub.L. 85–510, § 2, 72 Stat. 353, and amended Sept. 8, 1959, Pub.L. 86–232, § 8, 73 Stat. 469, and renumbered § 14 and amended July 18, 1968, Pub.L. 90–407, §§ 11(2), 12, 82 Stat. 365, 366.

1968 Amendment. Subsec. (a). Pub.L. 90–407 substituted provisions making applicable chapter 51 and subchapter III of chapter 53 of Title 5, relating to classification and General Schedule pay rates, for provisions making applicable the civil-service laws and regulations and the Classification Act of 1949, and provisions that the members of special commissions be appointed without regard to the provisions of Title 5, governing appointments in the competitive service, for provisions that the Deputy Director, and members of divisional committees and special commissions be appointed without regard to the civil-service laws or regulations. Provisions of this subsection, relating to outside employment and activities of certain specified officers of the Foundation, were designated as subsec. (b).

Subsec. (b). Pub.L. 90–407 redesignated provisions of former subsec. (a) as (b), and, as so redesignated, added Assistant Directors to the specified officers of the Foundation prohibited from engaging in outside employment and activities. Former subsec. (b), providing for the appointment of a Deputy Director, was eliminated.

Subsec. (d). Pub.L. 90–407 eliminated applicability to members of each divisional committee, and substituted "$100" for "$50" and "section 5703" for "section 3b–2".

Subsec. (e). Pub.L. 90–407 struck out the divisional committees and" following "may serve as members of".

Subsec. (f). Pub.L. 90–407 redesignated former subsec. (g) as (f), and, as so redesignated, in cl. (2) substituted "United States" for "States, Territories, possessions, and the District of Columbia", in cl. (3) substituted "advance scientific research" for "advance basic research", and in cl. (4) substituted "independent scientific research" for "independent basic research". Former subsec. (f), exempting members of the Board, division committees, or special commissions from the provisions of former sections 281, 283, or 284 of Title 18 of former section 99 of Title 5, unless the act made unlawful by the aforementioned former sections directly involved or directly interested the Foundation, was eliminated.

Subsec. (g). Pub.L. 90–407 redesignated former subsec. (h) as (g), and, as so redesignated, struck out "and, until such time as an appropriation is made available directly to the Foundation, for general administrative expenses of the Foundation without regard to limitations otherwise applicable to such funds" following "the purposes for which the transfer was made". Former subsec. (g) was redesignated as (f).

Subsec. (h). Pub.L. 90–407 added subsec. (h). Former subsec. (h) was redesignated as (g).

Subsec. (i). Pub.L. 90–407 struck out subsec. (i), which provided for the transfer of the National Roster of Scientific and Specialized Personnel from the United States Employment Service to the Foundation.

Transfer of Functions. Authority of Director of the National Science Foundation, from time to time, to make appropriate provisions authorizing the performance by any other officer, or by any agency or employee, of the National Science Foundation of any of his functions (including functions delegated to him by the National Science Board), see Reorg. Plan No. 5 of 1965, eff. July 27, 1965, 30 F.R. 9355, 79 Stat. 1323, set out as a note under section 1867 of this title.

Continuation of Existing Officers, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1874. Security provisions—Nuclear energy research and development

(a) The Foundation shall not support any research or development activity in the field of nuclear energy, nor shall it exercise any authority pursuant to section 1870(e) of this title in respect to that field, without first having obtained the concurrence of the Atomic Energy Commission that such activity will not adversely affect the common defense and security. To the extent that such activity involves restricted data as defined in the Atomic Energy Act of 1954 the provisions of that Act regarding the control of the dissemination of restricted data and the security clearance of those individuals to be given access to restricted data shall be applicable. Nothing in this chapter shall supersede or modify any provision of the Atomic Energy Act of 1954.

Research relating to national defense

(b) (1) In the case of scientific or technical research activities under this chapter in connection with matters relating to the national defense,

with respect to which funds have been transferred to the Foundation from the Department of Defense in accordance with the provisions of section 1873(g) of this title, the Secretary of Defense shall establish such security requirements and safeguards, including restrictions with respect to access to information and property, as he deems necessary.

May 10, 1950, c. 171, § 15, 64 Stat. 156; Apr. 5, 1952, c. 159, § 1, 66 Stat. 43, renumbered § 16, July 11, 1958, Pub.L. 85–510, § 2, 72 Stat. 353, and amended Oct. 16, 1962, Pub.L. 87–835, § 1, 76 Stat. 1069, and renumbered § 15 and amended July 18, 1968, Pub.L. 90–407, §§ 11(2), 13, 82 Stat. 365, 366.

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1968 Amendment. Subsec. (a). Pub.L. 90–407 substituted "1954" for "1946".

Subsec. (b) (1). Pub.L. 90–407 substituted "section 1873 (g) of this title" for "section 1873(h) of this title".

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1875. Appropriations

(a) To enable the Foundation to carry out its power and duties, there is hereby authorized to be appropriated to the Foundation for the fiscal year ending June 30, 1969, the sum of $525,000,000; but for the fiscal year ending June 30, 1970, and each subsequent fiscal year, only such sums may be appropriated as the Congress may hereafter authorize by law. Sums authorized by this subsection shall be in addition to sums authorized by section 1122(b) (1) of Title 33.

May 10, 1950, c. 171, § 16, 64 Stat. 157; Aug. 8, 1953, c. 377, 67 Stat. 488, renumbered § 17, July 11, 1958, Pub.L. 85–510, § 2, 72 Stat. 353, and renumbered § 16 and amended July 18, 1968, Pub.L. 90–407, §§ 11(2), 14, 82 Stat. 365, 366.

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Codification. Section 1122(b) (1) was, in the original, section 201(b) (1) of the Marine Resources and Engineering Development Act of 1966. For purposes of classification, section 201(b) (1) of the Marine Resources and Engineering Development Act of 1966 was translated as section 1122(b) (1) of Title 33 as the probable intent of Congress.

1968 Amendment. Subsec. (a). Pub.L. 90–407 substituted provisions authorizing the appropriation of funds for the fiscal year ending June 30, 1969, June 30, 1970, and each subsequent fiscal year, such sums to be in addition to sums authorized by section 1122(b) (1) of Title 33, for provisions authorizing the appropriation of such sums as may be necessary to carry out the provisions of this chapter out of any money in the Treasury not otherwise appropriated.

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note undersection 1862 of this title.

Legislative History: For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

§ 1877. Science Information Council—Establishment; membership; elections and appointments; tenure; reappointment

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Compensation and allowance for expenses

(c) Persons appointed to the Council shall, while serving on business of the Council, receive compensation at rates fixed by the National Science Foundation, but not to exceed $100 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

As amended Pub.L. 90–407, § 15(b), July 18, 1968, 82 Stat. 367.

1968 Amendment. Subsec. (c). Pub.L. 90–407 substituted "$100" for "$50".

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation. Amendment by Pub.L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub.L. 90–407, set out as a note under section 1862 of this title.

Legislative History. For legislative history and purpose of Pub.L. 90–407, see 1968 U.S.Code Cong. and Adm.News, p. —.

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